140-25

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 247.

WILLIAM HENDERSON, JOSEPH WALDRON, CATHARINE WALDRON, HENRY WALDRON, ET AL., APPELLANTS,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

No. 248.

ETHAN A. HITCHCOCK, APPELLANT,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 17, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 247.

WILLIAM HENDERSON, JOSEPH WALDRON, CATHARINE WALDRON, HENRY WALDRON, ET AL., APPELLANTS,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

No. 248.

ETHAN A. HITCHCOCK, APPELLANT,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	4	2
Exhibit A—Deed of trust from the Carbondale Coal & Coke Co. to Wm. E. Burr, February 1, 1878	15	8
B—Deed of trust from the St. Louis Coal & Coke Co. to Chas. Miller, February 2, 1880	33	15
Order appointing John W. Harrison receiver, &c.	42	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 15, 1890.

	Original.	Print.
Intervening petition of Wm. Henderson *et al.*	44	22
Exhibit A—Agreement between G. T. Johnson *et ux.* and Frank J. Chapman *et al.*, March 28, 1871	62	29
B—Agreement between Nancy Priddy and the Carbondale Coal & Coke Co., April 5, 1873	67	31
C—Agreement between Thomas Waldron *et ux.* and the Carbondale Coal & Coke Co., March 11, 1873	74	34
D—Agreement between Geo. T. Johnson *et ux.* and the Carbondale Coal & Coke Co., March 15, 1873	81	37
E—Agreement between Catharine Waldron *et al.* and the Carbondale Coal & Coke Co., April 5, 1873	88	39
F—Agreement between Tinsley Priddy *et ux.* and the Carbondale Coal & Coke Co., March 8, 1873	97	42
G—Account of Wm. Henderson against the Carbondale Coal & Coke Co., July 15, 1885	104	45
H—Account of Joseph Waldron against the Carbondale Coal & Coke Co., July 15, 1885	106	46
I—Account of Geo. T. Johnson *et ux.* against the Carbondale Coal & Coke Co., July 15, 1885	108	47
K—Account of Catharine Waldron *et al.* against the Carbondale Coal & Coke Co., April 7, 1885	110	48
L—Account of Tinsley Priddy *et ux.* against the Carbondale Coal & Coke Co., February 20, 1885	112	49
N—Letter of Joseph Waldron to John W. Harrison, receiver, &c., January 1, 1885	114	50
M—Letter of Wm. Henderson to John W. Harrison, receiver, &c., January 1, 1885	114	51
O—Affidavit of Wm. Henderson as to mailing notices to receiver	115	51
P—Notice of Geo. T. Johnson *et ux.* to the Carbondale Coal & Coke Co., February 2, 1885	116	51
Q—Notice of Catharine Waldron *et al.* to the Carbondale Coal & Coking Co., February 2, 1885	118	52
R—Notice of Tinsley Priddy *et ux.* to the Carbondale Coal & Coking Co., February 2, 1885	120	53
S—Affidavit of James M. Washburn as to mailing notices to receiver	122	54
T—Registry return receipt from receiver	123	55
Answer of receiver to petition of Wm. Henderson *et al.*	124	56
Exceptions of intervenors to answer of receiver	131	60
Decree, entered September 15, 1885	134	61
Motion of Carbondale Coal & Coke Co. to modify decree	136	62
Petition of receiver for rehearing	138	63
Order granting petition for rehearing	140	64
Order granting leave to Wm. E. Burr to file cross-bill	141	64
Cross-bill of Wm. E. Burr	142	64
Motion of Wm. E. Burr for leave to answer intervening petition	167	76
Order granting Wm. E. Burr leave to answer intervening petition	168	76
Answer of Wm. E. Burr to intervening petition	169	77
Amendment to intervening petition	175	80
Answer of Wm. E. Burr to amendment to intervening petition	179	81
Answer of W. A. Blossom, receiver, to amendment to intervening petition	182	83

	Original.	Print.
Order appointing special examiners	186	84
Order limiting time for taking testimony	187	85
Order granting leave to Wm. E. Burr to amend answer and making E. A. Hitchcock defendant	187	85
Amendment to answer of Wm. E. Burr	188	86
Order extending time in which to take testimony for petitioners	190	86
Order appointing special examiner	190	87
Answer of E. A. Hitchcock to intervening petition	191	87
Evidence for petitioners	197	90
Testimony of Sarah Priddy	199	90
Catharine Waldron	203	92
Israel Waldron	217	99
Joseph Waldron	219	100
Robert Winning	234	109
William Henderson	237	111
David Waldron, Jr.	250	118
James M. Washburn	253	119
Examiner's certificate, &c.	258	122
Evidence for defendants	262	124
Testimony of G. T. Johnson	263	124
H. A. Blossom	268	127
Wm. J. Allen	288	138
Examiner's certificate, &c.	291	140
Testimony of Wm. H. Warder	294	141
Walter Tregoning	313	149
Exhibit A—Condensed abstract of title to the E. ½ S. E. q'r sec. 33, T. 8 S., R. 1 east, of 3d P. M. (80 acres), compiled by W. H. Warder	334	158
B—Condensed abstract of title to the S. W. ¼ S. E. q'r sec. 33, T. 8 S., R. 1 east, of 3d P. M. (40 acres), compiled by W. H. Warder	341	158
C—Condensed abstract of title to the W. ½ N. W. q'r sec. 3 and N. E. ¼ N. E. q'r sec. 4, T. 9 S., R. 1 east, 3d P. M. (105 acres), compiled by W. H. Warder	349	158
D—Condensed abstract of title to the N. W. ¼ S. W. q'r and S. W. ¼ S. W. q'r and S. W. ¼ N. W. q'r and W. ½ S. E. ¼ S. W. q'r sec. 34, T. 8 S., R. 1 east, of 3d P. M. (140 acres), compiled by W. H. Warder	361	158
Amendment to intervening petition of Henderson *et al.*	368	159
Answer to amendment to petition of Henderson *et al.*	369	159
Order of dismissal as to G. T. Johnson	370	160
Final decree	371	160
Order allowing appeal of Wm. Henderson *et al.*	373	161
Order allowing appeal of E. A. Hitchcock	374	162
Appeal bond of Wm. Henderson *et al.*	375	162
Appeal bond of E. A. Hitchcock	379	164
Clerk's certificate	381	164
Assignment of errors	383	165

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, presiding judge, and the Hon. Samuel H. Treat, district judge of said district, on Saturday, the sixth day of November, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

J. A. JONES, *Clerk.*

SAMUEL M. DODD, JAMES G. BROWN, SYLVESTER H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, and Andrew C. Bryden
vs.
CARBONDALE COAL AND COKE COMPANY, JAMES C. Bryden, and Margaret Bryden, Administratrix of the Estate of William Bryden, Deceased; Charles Miller, and William E. Burr, Trustee,
} In Chancery. Original Bill.

and

WILLIAM E. BURR, Trustee,
vs.
2 CARBONDALE COAL AND COKE COMPANY, JAMES C. Bryden, and Margaret Bryden, Administratrix of the Estate of William Bryden, Deceased; Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, Andrew C. Bryden, and John W. Harrison,
} Cross-Bill.

and

CHARLES MILLER, Trustee,
vs.
CARBONDALE COAL AND COKE COMPANY, JAMES C. Bryden, and Margaret Bryden, Administratrix of the Estate of William Bryden, Deceased; Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, Andrew C. Bryden, and John W. Harrison.
} Cross-Bill.

In the matter of the intervening petition of William Henderson, Joseph Waldron, Catherine Waldron, David Waldron, Jr., Henry Waldron, Catherine Waldron, Jr., Israel Waldron, Sarah Priddy, Pettus Priddy, Burke Priddy, Elizabeth Ennis, Amanda Griffith, Mary Walker, Catharine McCree, Abraham Priddy, Ida Priddy, Emma Morgan, and Mary Fowler.

3 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and

eighty-four, came Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, and Andrew C. Bryden, citizens of the State of Missouri, complainants, by William J. Allen, Esq., their solicitor, and filed in the clerk's office of the circuit court of the United States for the southern district of Illinois their bill of complaint against The Carbondale Coal and Coke Company, a corporation organized and existing under the laws of the State of Illinois, defendant; which said bill of complaint, together with Exhibits "A" and "B" thereto, is in the words and figures following, to wit:

4 *Bill of Complaint.*

In the Circuit Court of the United States for the Southern District of Illinois.

To the honorable the judges of the circuit court of the United States for the southern district of Illinois:

Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, and Andrew C. Bryden, residing in the city of St. Louis, in the State of Missouri, and citizens of said city and State, bring this their bill against the Carbondale Coal and Coke Company, a corporation organized and existing under the laws of the State of Illinois and having its chief office and place of business in the city of Carbondale, county of Jackson and State of Illinois, in the southern district of Illinois aforesaid, which corporation is a citizen of said State of Illinois; James C. Bryden and Margaret Bryden, administratrix of the estate of William Bryden, deceased, citizens and residents of the State of Illinois and of the said southern district thereof aforesaid, and Charles Miller and William E. Burr, trustees, &c., citizens of St. Louis, in the State of Missouri.

And your orators complain and say that the Carbondale Coal and Coke Company is a coal-mining, coke-producing, and business corporation organized and existing under and pursuant to the laws of the State of Illinois and for more than five years last past has been doing business in said State and district and elsewhere; that said corporation was formed on or about the 6th day of October, A. D. 1872, under and pursuant to the general incorporation laws of the State of Illinois; that afterwards, to wit, on or about the 1st day of January, A. D. 1881, it purchased and consolidated with a certain other mining and business corporation which had been organized under and pursuant to the laws of the State of Missouri, but

5 whose property and interests were principally in the county of Jackson and State of Illinois; that said purchase and consolidation were made pursuant — the order and authority of resolutions of the board of directors of each of said corporations and according to the power and authority of the then existing laws of the States of Missouri and Illinois; and your orators show that under and by virtue of the laws of said States of Missouri and Illinois the said Carbondale Coal and Coke Company by such purchase and

consolidation succeeded to and became the owner of all the assets and assumed the liabilities of the said St. Louis Coal and Coke Company.

And your orators further show that the said Carbondale Coal and Coke Company was originally organized as a mining corporation with the power to lease coal lands, mine and sell coal, manufacture and sell coke, and purchase lands for mineral purposes; that said corporation owned large tracts of land and many leasehold estates underlaid with coal in the vicinity of Cartersville, county of Williamson and State of Illinois, on which had been erected and made many and valuable improvements, consisting of houses, sheds, buildings, coal shafts, slopes, &c., for the purpose of mining, hoisting, and shipping coal; that on the first day of February, A. D. 1878, the said corporation, in order to procure additional capital with which to continue and extend its corporate business, issued one hundred bonds for five hundred dollars each, due and payable ten years from date, with interest coupons payable semi-annually at the rate of ten per cent. per annum, principal and interest payable at the St. Louis National Bank, in the city of St. Louis and State of Missouri; that said mortgage also provided that said corporation should, for the purpose of creating a sinking fund, pay to the trustee men-
6 tioned in said trust deed, William E. Burr, five cents on each and every ton of coal to be mined, and contained other provisions to be performed by said company; that said bonds were so made and executed in pursuance of a resolution to that end duly passed by the board of directors of said corporation; that pursuant to said resolution said Carbondale Coal and Coke Company made, executed, and delivered to defendant, William E. Burr, as trustee, an indenture of mortgage or trust deed on all of said real estate in Williamson county, Illinois, in order to secure the principal and interest of said 100 bonds of five hundred dollars each, which mortgage was dated February 1st, 1878, a true and correct copy of which is herewith filed, marked Exhibit A, and your orators pray that the same may be taken as a part of this bill as fully as if incorporated in the body of it, and your orators refer to the said copy as showing the property embraced in and covered by said mortgage, and the terms, conditions, and provisions thereof.

That said mortgage was duly acknowledged and recorded as required by law; that said bonds were negotiated for value and were and are outstanding and constitute a debt of said corporation.

And your orators further show that the authorized capital stock of the Carbondale Coal and Coke Company was originally fifty thousand dollars in shares of one hundred dollars each, which has been, in conformity with the laws of the State of Illinois and the valid legal action of said corporation, increased from time to time to the sum of one million dollars in shares of one hundred dollars each; that they are informed and believe that on the 22nd day of
7 September, A. D. 1884, there were in existence five thousand nine hundred and sixty shares of one hundred dollars each of said stock held by the following persons and in the following amounts, respectively, to wit:

Estate of William Bryden	269	shares.
M. Bryden, administratrix, &c.	35	"
James C. Bryden	78	"
A. C. Bryden	239	"
James G. Brown	223	"
James G. Brown, trustee, &c.	30	"
Florence M. Brown	104	"
Helen M. Brown	104	"
Howard A. Blossom	100	"
E. C. Cushman, trustee, &c.	43	"
S. M. Dodd	403	"
O. B. Filley, trustee	479	"
Edwin Harrison	2,630	"
Ellen C. James	160	"
Sylvester H. Laflin	420	"
A. H. Laflin	10	"
Charles Miller	3	"
George A. Madill	250	"
John J. O'Fallon	250	"
P. W. Schneider	100	"
M. Watson	30	"

And your orators further show that the said St. Louis Coal and Coke Company, on the second day of February, A. D. 1880, under its then name, in order to procure additional capital with which to develope its coal and mining property in Jackson county, Illinois, issued seventy-five bonds for one thousand dollars each, due and payable on the second day of February, A. D. 1890, with semi-
8 annual coupons payable on the second days of August and February of each year at the company's office, in the city of St. Louis and State of Missouri; that said bonds were so made and executed in pursuance of a resolution to that end, and duly adopted by the board of directors of said corporation; that pursuant to said resolution said St. Louis Coal and Coke Company executed and delivered to Charles Miller, as trustee, an indenture of mortgage on all of its real estate and mining property in Jackson county, Illinois, aforesaid in order to secure the principal and interest of said seventy-five bonds of one thousand dollars each, which said indenture or trust deed was dated February 2, 1880, a true and correct copy of which is herewith filed, marked Exhibit B; and your orators pray that the same may be taken as a part of this bill as fully as if incorporated into the body thereof, and your orators refer to said copy as showing the property embraced and covered by said mortgage and the terms, conditions, and provisions thereof.

That said mortgage was duly executed, acknowledged, and recorded as required by law; that said bonds were negotiated for value and were and are outstanding in the hands of divers parties as holders thereof, and constituted a debt of the St. Louis Coal and Coke Company and now constitute a debt of the Carbondale Coal and Coke Company.

And your orators further show that by the terms, conditions, and

provisions of each of the said several mortgages, A & B, respectively, it is provided in substance that if default is made in the payment of the principal or interest or of the sinking fund or other undertaking of the said Carbondale Coal and Coke Company or the St. Louis Coal and Coke Company now assumed by said Carbondale Coal and Coke Company the trustee in either case, or his or
9 their successors in office, had and have the right of entry into and upon said mortgaged property, take possession thereof, and expose the same to sale for the purpose of paying such sum or sums as may be due on either of said mortgages.

And your orators further show that before and since the purchase and consolidation before referred to the said Carbondale Coal and Coke Company have made many valuable and costly improvements involving large expenditures of money in the expectation of mining and shipping large quantities of coal and coke; that the shaft and slope at Cartersville have a capacity of about eight hundred tons per day and that at Harrison a capacity of about four hundred tons per day; that there are at Harrison, in Jackson county, constructed and ready for use one hundred and eight coke ovens, about forty of which are in blast, and at Cartersville thirty coke ovens not in blast. Your orators further represent that the said property of the said Carbondale Coal and Coke Company is a most valuable one, and that while it required a very large sum of money to develop it, yet the corporation earned money from June first, 1882, to June 1st, 1883, over and above all expenses and charges.

That in consequence of the depression of business generally throughout the country the said corporation lost money and has been doing an unprofitable and losing business from that time to this; that while the property of the Carbondale Coal and Coke Company is worth at least five hundred thousand dollars, the corporation has become financially embarrassed on account of the low price and competition in its products.

And your orators further show that said corporation has been unable, in consequence of general depression in business and from other causes, to meet the charges upon it under said respective
10 trust deeds; that the interest due August second, A. D. 1884, upon the trust deed executed by the St. Louis Coal and Coke Company on the 2nd day of February, 1880, has not been paid; that the sum of five cents per ton for the purpose of creating a sinking fund according to the terms of the trust deed of February 1st, A. D. 1878, has not been paid in whole, but only to the extent of something over $6,000, but that said corporation is in default in that regard to a large amount; that in consequence of the stringency in the money market and lack of confidence in business enterprises the said corporation has been unable to borrow money and continue its business in such volume and to such extent as to render it remunerative; and your orators further represent that from time to time the said corporation, in addition to its mortgage debts, has become indebted on account of loans, labor, real estate, notes, and otherwise in the sum of about one hundred and seventy-five thousand dollars; that much of this last-mentioned indebtedness, due to

various persons, natural and artificial, has matured, notes and bills have gone to protest, and the credit of the corporation impaired and well-nigh destroyed; that in a few instances and for comparatively small sums suits have been instituted in the counties of Jackson and Williamson, in said State of Illinois, against said corporation and its property attached; that other creditors threaten to establish suits against it and the trustees respectively mentioned in said mortgages A & B, it is apprehended, may take steps to enter upon, take possession, sell, and sacrifice said property; that the mining labor at Cartersville can no longer be obtained because of a want of confidence that under the present management of the corporation the miners will receive their monthly wages, and no coal is being mined
11 at or shipped from that point, thereby throwing several hundred persons out of employment as miners and destroying the principal business of the Carbondale & Shawneetown portion of the St. Louis Coal railroad, the mines of said Carbondale — and Coke Company being located on or near said branch of said railroad; that the same condition of things is likely to take place at Harrison, and thus the entire property of the corporation, while earning nothing, is being wasted and destroyed and uselessly sacrificed.

And your orators further represent that said Carbondale Coal and Coke Company, on or about the first day of July, A. D. 1880, made what was called a pool contract, valuable to said corporation, with the St. Louis Coal and Railroad Company to run for twenty-five years, but that in the present condition of its affairs it is unable to carry out and perform the undertaking on its part, and may be sued for non-performance; that by reason of the premises there is great danger of a multiplicity of suits against said Carbondale Coal and Coke Company that judgments may be obtained upon which executions will issue and be levied upon the personal property as well as the real estate secured by said mortgages, and that the same will be sold at a great sacrifice to all parties concerned; that, the premises considered, there is imminent danger that the security provided by said mortgages will be diminished and the property wasted and destroyed; that it is manifestly for the interest as well of the holders of both of said series of bonds *and* the creditors and stockholders of said corporation that its contracts be carried out and profits realized therefrom; that by the appointment of a receiver for the purpose of operating said coal mines, and thereby carrying out
12 said contracts and of keeping together the property of said corporation and of preventing the waste, loss, and damage likely to accrue should a multiplicity of suits be brought, the property of said corporation may be saved, the mines operated successfully, and confidence on the part of the miners restored.

And your orators further represent that they are in the aggregate owners of more than four thousand shares of the stock of said Carbondale Coal and Coke Company; that they are creditors by advancements, loans, &c., in the aggregate to a sum exceeding eighty thousand dollars, and are liable as indorsers in the sum of many thousand dollars, the precise amount not at this time particularly

stated for want of data, and in view of their controlling and overruling interest in said corporation they feel compelled to ask the appointment of a receiver.

And your orators show that Charles Miller and William E. Burr are the trustees severally under said respective mortgages before referred to, and your orators make them defendants hereto with the said Carbondale Coal and Coke Company and the said James C. Bryden and Margaret Bryden.

Wherefore and forasmuch as your orators are remediless in the premises according to the rules of the common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the said defendants may be required to make answer respectively to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were here expressed and they thereunto particularly interrogated, but not under oath, answer under oath being hereby expressly waived; that a receiver may be appointed according to the course and practice of this court, with the usual powers of
13 receivers in like cases, of all and singular the property, franchises, interests, things in action, effects, moneys, receipts, bills, incomes, earnings, rights, privileges, and immunities of said company connected with or relating to the property of said corporation, and that said receiver may be authorized and directed to maintain and operate said coal and coke business and everything connected therewith and with the property, rights, and effects of said corporation, and to keep the same in proper repair and carry out and perform all contracts, and to receive, collect, and preserve all property, assets, and incomes of said Carbondale Coal and Coke Company, and that such other orders or directions as may be made in respect of said receivership as may be equitable and proper, may it please your honor to grant unto your orators a writ of subpœna directed to the Carbondale Coal and Coke Company and the several other defendants hereinbefore mentioned, thereby commanding them and each of them, at a certain time and under a penalty to be therein named, to be and appear before your honors in this honorable court, then and there severally to answer all and singular the matters aforesaid (but not under oath), and to stand to, abide, and perform such other or further orders and decrees therein as to your honor shall seem meet.

SAM'L M. DODD,
JAMES G. BROWN,
SYLVESTER H. LAFLIN,
EDWIN HARRISON,
GEORGE A. MADILL,
JOHN J. O'FALLON,
ANDREW C. BRYDEN,
By WILLIAM J. ALLEN,
Sol. for Complainants.

14 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

On this day, October 14th, A. D. 1884, personally appeared before the undersigned, clerk of the circuit court of the United States for the southern district of Illinois, Samuel M. Dodd, Edwin Harrison, and Andrew C. Bryden, who, after being first duly sworn, state that the matters and things contained in the foregoing bill, so far as the same are stated of their own knowledge, are true, and so far as stated from information and belief they believe them to be true.

EDWIN HARRISON.
SAMUEL M. DODD.
ANDREW C. BRYDEN.

Subscribed and sworn to before me by Edwin Harrison, Samuel M. Dodd, and Andrew C. Bryden October 14, 1884.

J. A. JONES, *Clerk.*

(Indorsed:) Filed October 14, 1884. J. A. Jones, clerk.

15 EXHIBIT "A."

EXHIBIT A TO BILL OF COMPLAINT.

This deed of trust, made and entered into this first day of February, A. D. 1878, by and between the Carbondale Coal and Coke Company, a corporation duly created, organized, and in operation under and by virtue of the laws of the State of Illinois, party of the first part, and William E. Burr, of the city of Saint Louis, party of the second part, witnesseth: That, in consideration of the debt and trust hereinafter mentioned and created and of the sum of one dollar to said party of the first part paid by said party of the second part, the receipt of which is hereby acknowledged, the said Carbondale Coal and Coke Company does by these presents grant, bargain, and sell, convey and confirm, unto said William E. Burr the following-described real estate, to wit:

First group of lands.—The following tracts of land situate in Williamson county, State of Illinois, viz:

First. The northwest quarter of the northwest quarter of section eleven, township nine south, range one east, of the third principal meridian; and also one square acre out of the southeast corner of the southwest quarter of the southwest quarter of section two of said township and range, being one square acre in the said
16 corner of said quarter section conveyed to said company by deed of Chapman and others, dated twenty-ninth day of October, A. D. 1872, and recorded in the recorder's office of said Williamson county in Book Z, page 552, said tract containing forty-one acres; also,

Second. A certain tract of land in the town of Cartersville, in said county, thus described, to wit: Commencing fifty feet south of the southeast corner of block number eleven of said town, running thence west one hundred feet; thence south one hundred feet;

thence east one hundred feet; thence north to the place of beginning, being the same property conveyed to said company by Chapman and wife by *and* dated January first, A. D. 1873, and recorded in said recorder's office in Book number 5, page 269.

Third. The southwest quarter of the northeast quarter and the south half of the northwest quarter of section two, in township nine south, of range one east, of the third principal meridian, containing one hundred and twenty acres, more or less, and being the same land conveyed to said company by the Grand Tower Mining, Manufacturing and Transportation Company by deed dated March eighth, A. D. 1873, and recorded in said recorder's office in Book number 1, page 357.

17 Fourth. A parcel of land in the county of Williamson, State of Illinois, described thus: Beginning at the southwest corner of the east half of the northwest quarter of the southwest quarter of section two (the same being now owned by Laban Carter), thence west on a line parallel with the section line to the centre of the railroad switch; thence northeasterly along said railroad switch to the west line of Laban Carter's land, as herein described; thence south along said line to the place of beginning, containing one-half acre, more or less, and being a part of the west half of the northwest quarter of the southwest quarter of section two (2), township nine (9) south, range one (1) east, of the third principal meridian, excepting and reserving therefrom all the coal underlying said piece of land, the same having been already conveyed by lease to the Carbondale Coal and Coke Company, and being the same land conveyed to said company by Mary Onley by deed dated 28th day of April, A. D. 1877, and recorded in said recorder's office in Book 8, page 383; and for the same considerations hereinbefore recited said Carbondale Coal and Coke Company by these presents further bargains and sells, conveys and confirms, to said William E. Burr the following-described property, to wit:

18 Second group of lands.—All the following-named leaseholds and mining rights and exclusive privileges in and to lands in the said county of Williamson, State of Illinois, namely:

First. A lease of coal and mining rights in and to the west half of the northwest quarter of section two and the northeast quarter of southeast quarter of section three, in township nine south, range one east, of the third principal meridian, containing fifty-three acres, said lease being made by Mary Onley and Martha Onley to said company, dated March 21st, A. D. 1871, and recorded in the said recorder's office in Book 7, page 204.

Second. A lease of coal and mining rights in and to the southeast quarter of the northeast quarter of section three, township nine south, of range one east, of the third principal meridian, containing thirty-five acres, said lease being made by Joseph T. Williams and wife to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book one (1), page 320.

Third. A lease of coal and mining rights in and to the southeast quarter of the southeast quarter of section three, township nine south, of range one east, of the third principal meridian, contain-

ing forty acres, said lease being made by George M. McNeill
19 and wife to said company, dated March 21st, A. D. 1871, and recorded in said recorder's office in Book one (1), page 333.

Fourth. A lease of coal and mining rights in and to the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of section two, township nine south, of range one east, of the third principal meridian, containing seventy acres, more or less, said lease being made by Eliza Peterson and wife to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book 7, page 63.

Fifth. A lease of coal and mining rights in and to the west half of the northwest quarter of section three and the northeast quarter of section four, township nine south, of range one east, of the third principal meridian, containing one hundred and five acres, more or less, said lease being made by Catherine Waldron and others to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book 1, page 325.

Sixth. A lease of coal and mining rights in and to the northeast quarter of the southwest quarter and the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter of section thirty-four, township eight south, of range
20 one east, of the third principal meridian, containing one hundred and twenty acres, more or less, said lease being made by George T. Johnson and wife to said company, dated March 28th, A. D. 1871, and recorded in said recorder's office in Book 1, page 317.

Seventh. A lease of coal and mining rights in and to the east half of the southwest quarter of the southwest quarter of section two, township nine south, of range one east, of the third principal meridian, containing nineteen acres, more or less, said lease being made by Andrew Jackson and wife to said company, dated March 25th, A. D. 1871, and recorded in said recorder's office in Book 1, page 339.

Eighth. A lease of coal and mining rights in and to the southwest quarter of the southeast quarter of section thirty-three, township eight south, of range one east, of the third principal meridian, containing forty acres, more or less, said lease being made by Joseph Waldron and wife to said company, dated March 25th, A. D. 1871, and recorded in said recorder's office in Book 1, page 331.

Ninth. A lease of coal and mining rights in and to the southwest quarter of the southeast quarter and the east half of the southeast quarter of the southwest quarter of section thirty-four, town-
21 ship eight south, of range one east, of the third principal meridian, containing sixty acres, more or less, said — being made by Parham Carter and wife to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office — Book 1, page 276.

Tenth. A lease of coal and mining rights in and to the northwest quarter of the southwest quarter and the southwest quarter of the southwest quarter and the southwest quarter of the northwest quarter and the west half of the southeast quarter of the southwest

quarter of section thirty-four, township eight south, of range one east, of the third principal meridian, containing one hundred and forty acres, more or less, said lease being made by Tinsley Priddy and wife to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book 1, page 310.

Eleventh. A lease of coal and mining rights in and to the east half of the southwest quarter and the east half of the northwest quarter of the southwest quarter and the west half of the southwest quarter of the southwest quarter of section two, township nine south, of range one east, of the third principal meridian, containing one hundred and twenty acres, more or less, said lease being made by Laban Carter and wife to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book 1, page 350.

22 Twelfth. A lease of coal and mining rights in and to the east half of the southeast quarter of section thirty-three, township eight south, of range one east, of the third principal meridian, containing eighty acres more or less, said lease being made by Nancy Priddy to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book 1, page 328.

Thirteenth. A lease of coal and mining rights in and to the southwest quarter of the northeast quarter and the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section thirty-three, township eight south, of range one east, of the third principal meridian, containing one hundred and twenty acres, said lease being made by William Tally and wife to said company, dated March 26th, A. D. 1871, and recorded in said recorder's office in Book 1, page 344.

Fourteenth. A lease of coal and mining rights in and to the north half of the northeast quarter of section three and the northwest quarter of the northwest quarter of section two, township nine south, and the southeast quarter of the southeast quarter of section thirty-four and a part of the southwest quarter of the southwest quarter of section thirty-five, township eight south, all of range one east, of the third principal meridian, containing one hundred

23 and fifty-seven acres, more or less, said lease being made by William E. Sizmore and wife to said company, dated March (20th) twentieth, A. D. 1871, and recorded in said recorder's office in Book 1, page 336.

And furthermore said Carbondale Coal and Coke Company, for the considerations hereinbefore recited, further assigns, transfers, sells, and conveys to said William E. Burr all the mine openings, mining machinery, tracks, switches, dumps, and coke ovens of said company now upon the property hereinbefore described; to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, unto said party of the second part, and on his death to the president of the Saint Louis National Bank, at Saint Louis, Missouri, for the time being, as his successor in this trust, and to the successor hereinafter designated,

in certain contingencies, and to the assigns of him and his successors forever, in trust, however, for the following purposes:

Whereas said Carbondale Coal and Coke Company has duly executed and is about to sell and dispose of a series of bonds, one hundred in number, of the same tenor, date, and amount, numbered consecutively from one to one hundred, inclusive, all of which
24 are dated the first day of February, A. D. eighteen hundred and seventy-eight (1878), and aggregate the sum of fifty thousand dollars, whereby said Carbondale Coal and Coke Company in and on the face of said bonds promises to pay, at the St. Louis National Bank, in the city of St. Louis, to the bearer thereof, the sum of five hundred dollars ten years after the said date thereof, and also at the same place the semi-annual instalments of interest thereon (represented by interest coupons thereto annexed), at the rate of ten per centum per annum; and whereas, for the further securing of said indebtedness, said Carbondale Coal and Coke Company has agreed and hereby covenants and agrees to cause all taxes, rates, and assessments, general and special, now existing or hereafter levied and charged according to law on or against the property hereinbefore described as the "first group of lands," to be fully paid and discharged within the time required by law (the taxes on the "second group of lands" are by the covenants under which they are held bound to be paid by the lessors or covenantors therein); and whereas, for the still further securing of said indebtedness, said Carbondale Coal and Coke Company has agreed and hereby covenants and agrees
25 that for each and every ton of coal mined and extracted by said company from the lands hereinbefore described as the "first group of lands" the said company shall and will, within thirty days after said coal shall have been so mined and extracted from said lands, deposit with said William E. Burr, trustee, or his successors in this trust, the sum of five cents ($\frac{5}{100}$ of one dollar) for each and every ton of said coal, the fund thereby created to be by said trustee or his designated successors carefully accumulated as a "sinking fund" pledged for the full payment of said indebtedness, and to be thereto applied if necessary as hereinafter provided. Said fund shall be deposited by said trustee, in his name as "trustee for the Carbondale Coal and Coke Company and its bondholders," in such safe and reliable depository in the city of Saint Louis as he may from time to time select, at a rate of interest thereon *at a rate of interest thereon* of not less than four per centum per annum; which interest said trustee shall yearly incorporate with the principal sum of said sinking fund;

And whereas said Carbondale Coal and Coke Company has further covenanted and agreed, for the still further securing of said indebtedness, that all moneys arising from any sale of town
26 lots, as hereinafter provided for, shall be received and held by the trustee herein and incorporated by him with the said "sinking fund" as a part thereof, and thereafter held by said trustee in the manner above described, pledged for the further security of the indebtedness hereinbefore recited: Now, therefore, if said

Carbondale Coal and Coke Company shall well and truly pay or cause to be paid unto the legal holders, respectively, each and all of the bonds above described and each and all of the several instalments of interest thereon according to the tenor of said bonds, and shall faithfully perform on its part all the covenants hereinbefore contained, then this deed shall be void and the property hereinbefore conveyed shall be released of record at the cost of said company, and the trustee at the then time being shall immediately transfer in due form to said company the "sinking fund" hereinbefore mentioned, the title to which shall vest in said company upon its performance of the conditions of this deed; but if said Carbondale Coal and Coke Company shall fail to keep and perform on its part all or any of the covenants and agreements hereinbefore recited, or if any one of said bonds shall not be fully paid on maturity thereof according to the tenor and promise of the same, or if
27 the semi-annual instalments of interest upon any five of the said bonds shall at any time be due and unpaid, then this deed shall remain in full force and virtue, and the said party of the second part or his successor in this trust, as hereinbefore designated, or in case of the trustee's death, inability, refusal to act, or absence from the States of Missouri or Illinois, when authorized to sell under these presents, and a sale be desired by the holder of any one of said bonds, then the sheriff of the county of Williamson, State of Illinois, for the time being (who shall thereupon become successor in this trust to the title of said property, and the same become vested in him in trust for the purposes and objects of these presents, and with all the powers, duties, and obligations thereof), shall proceed to apply the "sinking fund" herein mentioned towards the payment of said indebtedness, and if the said fund be not sufficient to satisfy the same shall then proceed to sell the property hereinbefore described and any and every part thereof at public vendue to the highest bidder, for cash, at the front door of the court-house, at the county-seat of Williamson county, in the State of Illinois, first having
28 given thirty days' public notice of the time, terms, and place of sale and of the property to be sold by printed advertisement in some newspaper published in the English language in the said Williamson county, and also for the same period of time and to the same effect in some daily newspaper published in the English language in the city of St. Louis, State of Missouri, and upon such sale shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof (the recitals wherein of the giving of such notice and, in case such sheriff sell, of the happening of any or either of the aforesaid contingencies making him successor herein as aforesaid shall be *prima facie* proof thereof), and receive the proceeds of such sale, out of which he shall pay and discharge, first, the expenses of executing this trust, including compensation to the trustee for his services; secondly, all unpaid taxes and statutory liens which said company has hereinbefore covenanted to pay; thirdly, the interest accrued due on said bonds at the then time being; fourthly, the principal of said bonds, which, in event

of any default in the performance of the covenants herein by said company or in the payment of said indebtedness and sale en-
29 suing on account of such default, shall thereby become at once due and payable, whether actually due on their face or not, and, lastly, the balance of said proceeds, if any, shall be paid to said Carbondale Coal and Coke Company or its legal representatives.

And it is further agreed between the parties hereto, in order not to retard the developement and improvement of the land hereinafter conveyed, that if hereafter at any time during the existence of this trust said Carbondale Coal and Coke Company shall in due form, by a vote of its directors, resolve to have a town laid out and established on a part of the property hereinbefore conveyed that the following parcel of land, to wit, the northwest quarter of the northwest quarter of section eleven, township nine south, range one east of the third principal meridian, containing in all forty acres, in the county of Williamson aforesaid, may be laid out as a town by said Carbondale Coal and Coke Company into town lots, streets, alleys, public squares, and other customary subdivisions (whereof said streets, alleys, squares, and other similar easements may be, in due form, dedicated to public use forever), and the said company and the said trustee herein for the time being shall thereupon join in a
30 public or private sale of said town lots upon such previous public notice and such terms of sale as said company and said trustee may agree upon; or if they cannot agree thereon, then said terms shall be for cash, said sale public, and the said notice thereof the same as that herein provided in the event of a sale to satisfy the said bonded debt, and said company and such trustee shall join in deeds of conveyance of the lots so sold to the purchasers thereof, and said purchasers shall take, hold, and enjoy the same free from the lien or effect of this deed, but the entire proceeds of all such sales of such town lots shall be received and retained by said trustee herein (for the time being), to be by him incorporated with and treated in all respects the same as the "sink- fund" hereinbefore mentioned, and, like it, be held pledged for the due and faithful performance of the conditions of this deed of trust on the part of said Carbondale Coal and Coke Company.

And it is further agreed that so long as the covenant herein contained *are* faithfully performed on the part of said company and said indebtedness promptly met and discharged by it as the same accrues due the said company may retain the use and occupation of the real estate hereinbefore described and exercise the
31 right thereon of carrying on its corporate business operations as heretofore.

And the trustee herein covenants on behalf of himself and successors in said trust to faithfully perform and execute the trust herein created.

In witness whereof the said parties hereinbefore described have hereunto set their hands and seals the date first herein recited, the said Carbondale Coal and Coke Company executing the same by its president and secretary, thereunto fully authorized by the board of

directors of said corporation, under its corporate seal duly affixed hereto according to law.

(Signed) THE CARBONDALE COAL AND COKE COMPANY,
By ANDREW C. BRYDEN, [SEAL.]
Its President, and

[C. C. & C. Co. Seal.]

ALLEN D. NORMAN, [SEAL.]
Its Secretary.
WILLIAM E. BURR, [SEAL.]
Trustee.

STATE OF MISSOURI, } ss:
City of Saint Louis, }

Be it remembered that on this fourth day of April, 1878, personally appeared before me, a notary public in and for the city of Saint Louis, State of Missouri (qualified ninth day of November, 1875, my term expiring third day of November, 1881), William E. Burr, who — personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and he
32 then and there acknowledged the same to be his act and deed as trustee for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

(Signed) H. G. CRAFT,
Notary Public.

STATE OF ILLINOIS, } ss:
Jackson County, }

I, D. N. Hamilton, a notary public in and for the county of Jackson, in the State aforesaid, do hereby certify that Andrew C. Bryden and Allen D. Norman, personally known to me as the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument of writing as their free and voluntary act and deed and as the act and deed of the Carbondale Coal and Coke Company for the uses and purposes therein set forth.

Given under my hand and official seal this fifth day of April, A. D. 1887.

(Signed) D. N. HAMILTON,
Notary Public.

(Indorsed:) Filed October 14, 1884. J. A. Jones, clerk.

33 EXHIBIT "B."

EXHIBIT B TO BILL OF COMPLAINT.

This deed of trust, made and entered into this second day of February, A. D. 1880, by and between the St. Louis Coal & Coke Company, a corporation duly created, organized, and in operation under

and by virtue of the laws of the State of Missouri, party of the first part, and Charles Miller, of the city of St. Louis, party of the second part, witnesseth:

That, in consideration of the debt and trust hereinafter mentioned and created and of the sum of one dollar to said party of the first part paid by said party of the second part, the receipt of which is hereby acknowledged, the said St. Louis Coal & Coke Company does by these presents grant, bargain, and sell, and it conveys and warrants unto Charles Miller the following-described real estate situated in Jackson county, State of Illinois, to wit:

First. All the coal or mineral, of whatever kind, lying, being, or existing in, under, or throughout the following-described tracts or parcels of land, to wit: The southwest quarter of the northwest quarter of section twenty-seven (27) and the southeast quarter of the northeast quarter of section twenty-eight (28), all in township eight (8) south and range two (2) west, containing in the aggregate eighty (80) acres, more or less, together with all the estates, mining rights, privileges, and immunities conveyed to said St. Louis Coal and Coke Company by Edwin Harrison and others by deed dated the fifteenth day of October, A. D. 1879, recorded in the recorder's office of Jackson county, Illinois, in Book of Deeds 14, page 487; and further—

Second. All the real estate, mining rights, coal interests, and estates conveyed by Henry C. Boweby to Edwin Harrison by deed dated December 19th, 1874, in the recorder's office of Jackson
34 county, Illinois, in Book 8 of Deeds, page 450, in and to the following property, to wit: The south half of the southeast quarter of section twenty-eight (28), in township eight (8) south, range two (2) west; and furthermore—

Third. The northwest quarter of section thirty-four (34), in township eight (8) south and range ten (10) west, containing one hundred and sixty-five and eighty-two one-hundredths (165.82) acres, more or less; and further—

Fourth. All the real estate, mining rights, coal interests, and estates conveyed by Steven A. Holliday and wife to Edwin Harrison by deed dated November 11th, 1874, recorded in the recorder's office of Jackson county, Illinois, in Book 8 of Deeds, page 413, in and to the following property, to wit: The east half of the southwest quarter, the west half of the southeast quarter, and the west half of the east half of the southeast quarter of section twenty-seven (27), township eight (8) south, range two (2) west, and also the west half of the southwest quarter of section twenty-seven (27), and the south half of the northeast quarter of the southeast quarter of section twenty-eight (28), in township eight (8) south, range two (2) west; and further—

Fifth. All the real estate, mining rights, coal interests, and estates conveyed by Joseph Whipkey and wife to Edwin Harrison by deed dated November 7th, A. D. 1874, recorded in the recorder's office of Jackson county, Illinois, in Book 8 of Deeds, page 404, in and to the following property, to wit: The northwest quarter of section three (3), township eight (8) south, range two (2) west, and also the south

half of the southeast quarter of section twenty-eight (28), township eight (8) south, range two (2) west, and generally all the real estate, mining rights, coal interests, privileges, and immunities con-
35 veyed to said party of the first part by Edwin Harrison and wife by deed dated October 15th, A. D. 1879, recorded in the recorder's office of Jackson county, Illinois, in Book of Deeds 14, page 486, saving and excepting herefrom a certain right of way heretofore conceded by the party of the first part to the St. Louis Coal Railroad Company for the line of its railway through certain parts of said Jackson county; and, furthermore, said party of the first part, for the consideration previously recited herein, assigns, transfers, sells, and conveys to said trustee all the mine openings, mining machinery, track switches, and two hundred and sixteen (216) coke ovens of said company now being erected upon the property hereinbefore described; to have and to hold the same, with all the rights, privileges, and appurtenances, unto the said party of the second part, and on his death to Paul A. Fusz, of the city of St. Louis, Missouri, for the time being as his successor in this trust, and to the successors hereinafter designated in certain contingencies, and to the assigns of him and his successors forever, in trust, however, for the following purposes:

Whereas said St. Louis Coal and Coke Company has duly executed and is about to sell and dispose of a series of bonds, seventy-five (75) in number, of the same tenor, date, and amount, numbered consecutively from one to seventy-five, inclusive, all of which are dated the second day of February, 1880, and aggregating the sum of seventy-five thousand dollars ($75,000), whereby said St. Louis Coal and Coke Company in and on the face of each of said bonds promises to pay, at its office, in the city of St. Louis, to the bearer thereof the sum of one thousand — ($1,000) ten years after the said date thereof, and also at the same place the semi-annual instal-
ments of interest thereon (represented by interest coupons
36 thereto annexed) at the rate of eight (8) per cent. per annum; and whereas, for the further securing of said indebetedness, said party of the first part has agreed and hereby covenants and agrees to cause all taxes and assessments, general and special, now existing or hereafter levied or charged according to law on or against the property hereinbefore described to be fully paid and discharged within the time required by law; and whereas, for the still further securing of said indebtedness, said party of the first part has agreed and hereby covenants and agrees that for each and every ton of coal mined and extracted by said company from the mines hereinbefore described the said company shall and will, within thirty days after said coal shall have been so mined and extracted from said mines, deposit with said trustee or his successor in this trust the sum of five cents ($\frac{5}{100}$ of one dollar) for each and every ton of said coal, the fund thereby created to be by said trustee or his designated successor carefully accumulated as a "sinking fund," pledged for the full payment of said indebetedness and to be thereto applied, if necessary, as hereinbefore provided. Said fund shall be deposited by said trustee in his name as "trustee

for the St. Louis Coal and Coke Company and its bondholders" in such safe and reliable depository in the city of St. Louis as he may from time to time select, notice of said deposit being given to said company, at rate of interest thereon of not less than four (4) per cent. per annum, which interest said trustee shall yearly incorporate with the principal sum of said sinking fund:

Now, therefore, if said St. Louis Coal and Coke Company shall well and truly pay or cause to be paid unto the legal holders respectively each and all of the bonds above described and each
37 and all of the several instalments of interest thereon according to the tenor of said bonds, and shall faithfully perform on its part all the covenants and agreements hereinbefore contained, then this deed shall be void, and the property hereinbefore conveyed shall be released of record at the cost of said company, and the trustee at the then time being shall immediately transfer in due form to said company the sinking fund hereinbefore mentioned, the title to which shall vest in said company upon its performance of the conditions of this deed; but if said party of the first part shall fail to keep and perform on its part all or any of the covenants and agreements hereinbefore recited, or if any one of said bonds shall not be fully paid on maturity thereof according to tenor and promise of the same, or if the semi-annual instalments of interest upon any five of said bonds shall at any time be due and unpaid, then this deed shall become and remain in full force and effect, and the said party of the second part or his successors in this trust, as hereinbefore designated, or in case of the trustee's death, disability, or refusal to act or absence from the States of Missouri and Illinois when authorized to sell under these presents and a sale be desired — the holder of any one of said bonds, then the sheriff of the county of Jackson, State of Illinois, for the time being (who shall thereupon become successor in this trust to the title of said property and the same become vested in him, in trust for the purpose and object of these presents, and with all of the powers, duties, and obligations thereof) shall proceed to apply the sinking fund hereinbefore mentioned towards the payment of said indebtedness, and, if the said fund be not sufficient to satisfy the same, shall then proceed
38 to sell the property hereinbefore described and any and every part thereof at public vendue, to the highest bidder, for cash, at the front door of the court-house, at the county-seat of Jackson county, in the State of Illinois, first having given thirty days' public notice of the time, terms, and place of sale and of the property to be sold by printed advertisement in some newspaper published in the English language in said Jackson county, and also for the same period of time and to the same effect in some daily newspaper printed in the English language and published in the city of St. Louis, Missouri, and upon said sale shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof, the recitals wherein of the publication of such notice and in case such sheriff sell of the occurrence of any or either of the aforesaid contingences, making him successor herein as aforesaid, shall be *prima facie* evidence and proof thereof, and receive

the proceeds of such sale, out of which he shall pay and discharge, first, the expenses of this trust, including a reasonable compensation to the master for his services in this behalf; secondly, all unpaid taxes and statutory liens hereinbefore covenanted to be paid; thirdly, the interest accrued due upon said bonds at the then time being; fourthly, the principal of said bonds, which, in the event of default in the performance of the covenants hereinbefore recited by said company, or in the payment of said indebtedness and sale ensuing on account of such default, shall thereby become at once due and payable, whether actually due according to their terms or not; and, lastly, the balance of said proceeds, if any, shall be paid to said St. Louis Coal and Coke Company or its legal representatives; and

it is further agreed between the parties hereto, in order not to
39 retard the development and improvement of the land hereinbefore conveyed, that if hereafter at any time during the existence of this trust said St. Louis Coal and Coke Company shall in due form, by a vote of its directors, resolve to have a town laid out and established in a part of the property hereinbefore conveyed that the following parcel of land, to wit, the northwest quarter of section thirty-four (34), in township eight (8) south, and range two (2) west, above described, may be laid out as a town by said company and divided into town lots, streets, alleys, public squares, and other customary subdivisions (whereof said streets, alleys, squares, and other easements may be in due form dedicated to public use forever), and the said company and the trustee herein for the time being shall thereupon join in a public or private sale of said town lots upon such previous public notice and such terms of sale as said company and said trustee may agree upon, or if they cannot agree thereon, then said terms shall be for cash, said sale public, and the said notice thereof the same as that herein provided in the event of a sale to satisfy the said bonded debt, and said company, and such trustee shall join in the deeds of conveyance to the purchasers thereof and said purchaser shall take, hold, and enjoy the same free from the lien or effect of this deed, but the entire proceeds of all such sales of such town lots shall be received and retained by said trustee herein (for the time being), to be by him incorporated with and treated in all respects the same as the "sinking fund" hereinbefore mentioned, and like it be pledged for the due and faithful performance of the conditions of this deed of trust on the part of said St. Louis Coal and Coke Company; and it is further agreed that so long as the covenants
40 herein contained are faithfully performed on the part of the said party of the first part, and said indebtedness promptly met and discharged as the same accrues due, the said company may retain the use and occupation of the real estate hereinbefore described, and exercise the right therein of carrying on its corporate business operations as heretofore.

And the trustee herein covenants on behalf of himself and successors in this trust to faithfully perform and execute the trust hereinbefore recited and created.

In testimony whereof the said parties have hereunto set their hands and seals the date first herein recited, the said St. Louis Coal

and Coke Company executing the same by its president and secretary, thereunto fully authorized by the board of directors and stockholders of said corporation, with the corporate seal of said company duly affixed hereto according to law.

[CORPORATE SEAL.] (Signed) ST. LOUIS COAL AND COKE COMPANY,
By ANDREW C. BRYDEN, [SEAL.]
President,
And EDWARD BROWN, [SEAL.]
Its Secretary.
CHARLES MILLER, [SEAL.]
Trustee.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, Shepard Barclay, a notary public, heretofore duly commissioned and qualified, for the late county of St. Louis, of which the present said city of St. Louis was than a part, and residing ever since thus commissioned in said city of St. Louis, and as such duly commissioned and qualified according to law, within and for said city of St. Louis, for a term expiring December 2nd, 1882, do hereby certify that Andrew C. Bryden, who is personally known to me to be the president of the St. Louis Coal and Coke Company, and Edward Brown, who is personally known to me to be the secretary of said St. Louis
41 Coal and Coke Company, and both of whom are personally known to me to be the same persons whose names are subscribed to the foregoing instruments as having executed the same as such president and secretary, appeared before me this day in person, at said city, and acknowledged that the St. Louis Coal and Coke Company signed, sealed, and delivered said instrument by them, its president and secretary, as its free and voluntary act and deed, for the uses and purposes therein set forth; and I further officially hereby certify that on the same day, this 3rd day of February, A. D. 1880, Charles Miller, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as having executed the same as trustee, appeared before me, at said city of St. Louis, in person, and acknowledged then and there that he signed, sealed, and delivered said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and official seal notarial, at said city, this 3rd day of February, A. D. 1880.

[NOTARIAL SEAL.]

(Signed) SHEPERD BARCLAY,
Notary Public, as Aforesaid.

(Indorsed:) Filed October 14th, 1884. J. A. Jones, clerk.

Afterwards, to wit, on said fourteenth day of October, in the June term of said circuit court of the United States, the following proceedings were had in said court in said original cause and entered of record, to wit:

42 *Order Appointing John W. Harrison Receiver.*

SAMUEL M. DODD, JAMES G. BROWN, SYLVESTER H. LAFLIN, EDWIN HARRISON, GEORGE A. MADILL, JOHN J. O'FALLON, and ANDREW C. BRYDEN
vs.
CARBONDALE COAL AND COKE COMPANY, JAMES C. BRYDEN, and MARGARET BRYDEN, Administratrix of the Estate of WILLIAM BRYDEN, Deceased; CHARLES MILLER and WILLIAM E. BURR, Trustees.
} In Chancery.

On this day complainants, by William J. Allen, their solicitor, made their motion in open court for the appointment of a receiver in the above-styled cause, and the president of the defendant corporation being also present and consenting thereto and entering the appearance of the defendant corporation, and there being no objection interposed, it is ordered that John W. Harrison be appointed receiver of the defendant, The Carbondale Coal and Coke Company, with the usual powers of receiver in equity, upon his giving bond in the penal sum of fifty thousand dollars, with sufficient surety, to be approved by the court, conditioned for the faithful performance of his trust, and that upon the approval and filing of such bond the said John W. Harrison shall be vested with all his rights
43 and powers as receiver; and it is further ordered that the said defendant, Carbondale Coal and Coke Company, assign, transfer, and deliver over to said receiver all and singular the property, real and personal, of or belonging to said corporation, and that said defendant, The Carbondale Coal and Coke Company, its officers and agents, forthwith surrender and deliver to said receiver all the assets, materials, tools, machinery, fixtures, effects, and property of every nature and kind of or belonging to said defendant corporation, and also all money, notes, drafts, bills of exchange, checks, or other evidences of indebtedness due and owing to said corporation, as well as all books of account, accounts, deeds, bonds, mortgages, certificates of stock, vouchers, and papers of every nature belonging to said corporation; and it is further ordered that said receiver continue the management of the business of the defendant corporation until further order of the court; that he keep a full and accurate account of all his acts and doings as such receiver and report the same from time to time to this court, as may be directed; and said receiver is authorized to employ such clerks, agents, assistants, and attorneys as may be necessary in the discharge of his duties, and also have leave to apply to the court from time to time for such further order or directions as may be necessary.

44 Then, afterwards, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and eighty-five, came William Henderson and others, by Messrs. Barr and Washburn, their solicitors, and filed in the clerk's office of said court their intervening petition, with certain exhibits thereto; which

said intervening petition and exhibits are in the words and figures following, to wit:

Intervening Petition of William Henderson & Others.

UNITED STATES OF AMERICA, }
State of Illinois. }

United States Circuit Court for the Southern District of Illinois.

To the Hon. Samuel H. Treat, judge presiding:

Your petitioners, William Henderson (representing one lease), and Joseph Waldron (representing another lease), and George T. Johnson (representing another lease), and Catherine Waldron, David Waldron, Jr., Henry Waldron, and Catherine Waldron, Jr.—the last named, being a minor, petitions by Catherine Waldron, her guardian—(representing another lease), and Sarah Priddy, widow and administratrix of Tinsley Priddy, deceased; and Pettus Priddy,
45 Burke Priddy; Elizabeth Ennis, *ne-* Elizabeth Priddy; Amanda Griffith, *ne-* Priddy; Mary Walker, *ne-* Priddy; Catherine McCree, *ne-* Priddy; Abraham Priddy, William Priddy, and Ida Priddy (the last named, being minors, without a guardian, petition by Sarah Priddy, their mother and next friend), children and heirs-at-law of said Tinsley Priddy, deceased (representing another lease)—

Respectfully represent unto your honor that they are all residents of Williamson county, in the State of Illinois, except Elizabeth Ennis, who resides in Jackson county, Illinois, and have so resided for many years last past.

Your petitioners further represent that on or about the 5th day of April, A. D. 1873, one Nancy Priddy, widow of Pettus Priddy, deceased, and guardian of his children, who were then minors, to wit, Belina Priddy, Rodey Priddy, Henry Priddy, Martha Priddy, and Susan Priddy, as such widow and guardian, for herself and said minors, as the owners in fee of the east half of the southeast quarter of section 33, in township eight south and range 1 east, in said Williamson county, containing 80 acres, made and delivered to the Carbondale Coal and Coke Company (a corporation duly organized under the laws of the State of Illinois) a lease of said lands for the purpose of mining and removing the coal underlying said
46 lands, a copy of which lease is hereto attached as Exhibit B and part of this petition.

Your petitioners further state that afterwards, about the 23rd day of May, A. D. 1882, your petitioner, William Henderson, by purchase and conveyance, became the owner in fee of said lands, and ever since then has held and owned the same in fee, and as such owner he has been from thence hitherto and still is entitled to such rents and royalties as have accrued or become due by virtue of said lease.

Your petitioners further state that on or about the 11th day of March, A. D. 1873, one Thomas Waldron, as the owner in fee of the southwest quarter of the southeast quarter of section 33, in township

8 south and range 1 east, in said Williamson county, containing 40 acres, made and delivered to the said Carbondale Coal and Coke Company a like lease of said last-described lands for the purpose of mining and removing the coal underlying the same, a copy of which lease is hereto attached as Exhibit C of this petition.

That afterwards, to wit, on or about the 18th day of March, A. D. 1873, your petitioner, Joseph Waldron, by purchase and conveyance, became the owner in fee of said land, and ever since then has held and owned the same in fee, and as such owner he has been from thence hitherto and still is entitled to such rents and
47 royalties as have accrued or become due by virtue of said lease.

Your petitioners further state that your petitioner, George T. Johnson, as owner in fee of the northeast quarter of the southwest quarter and the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter of section 34, in township 8 south and range 1 east, in said Williamson county, containing 120 acres, on the 15th day of March, A. D. 1873, made and delivered to the said Carbondale Coal and Coke Company a lease of said lands for the purpose of mining and removing the coal underlying the same, a copy of which lease is hereto attached as Exhibit D of this petition; that ever since then said George T. Johnson has held and owned said lands in fee, and as such owner from thence hitherto he has been and still is entitled to such rents and royalties as have accrued or become due by virtue of said lease.

Your petitioners further state that on the 5th day of April, A. D. 1873, your petitioner, Catherine Waldron, as widow of Henry Waldron, dec'd, and as guardian of his minor children, to wit, Jacob Waldron, David Waldron, Jr., Henry Waldron, and Catherine Waldron, Jr., and Mary Waldron, adult child of said Henry
48 Waldron, dec'd, as the owners in fee of the west half of the northwest quarter of section 3 and the northeast quarter of the northeast quarter of section 4, in township 9 south and range 1 east, in said Williamson county, containing 105 acres, made and delivered to said Carbondale Coal and Coke Company a lease of said lands for the purpose of mining and removing the coal underlying the same, a copy of which lease is hereto attached as Exhibit E of this petition.

Your petitioners further state that by descent from the said Henry Waldron, dec'd, and from the said Jacob Waldron, dec'd, who died intestate on or about the — day of March, A. D. 1877, and by purchase and conveyances made prior to the year A. D. 1882, said lands, since the 31st day of December, A. D. 1881, have been held and owned as follows, to wit: The petitioner, Catherine Waldron, as widow of Henry Waldron, dec'd, owns one-third of said lands for her life as her dower right in said lands. She also owns a homestead therein to the value of $1,000 (neither of which have been assigned or set off to her by metes and bounds). She also owns in fee twenty undivided twenty-nine seventy-seconds of said land in fee, and said Henry
49 Waldron and Catherine Waldron, Jr., each own ten undivided fifty-sixths of said land in fee, all subject to the dower and home-

stead rights of said Catherine Waldron, and said Catherine Waldron is still the guardian of said Catherine Waldron, Jr., and until the — day of May, A. D. 1885, was the guardian of said Henry Waldron, at which date he attained his majority; and as such owners of the aforesaid lands in said township nine south the said Catherine Waldron (for herself and as the guardian of said Henry Waldron and Catherine Waldron, Jr.) and David Waldron, Jr., are entitled to such rents and royalties as have accrued or become due since the 1st day of January, A. D. 1882, under and by virtue of the terms of said lease.

Your petitioners further show that on the 8th day of March, A. D. 1873, one Tinsley Priddy (since deceased), being the owner in fee of the northwest quarter of the southwest quarter and the southwest quarter of the southwest quarter and the southwest quarter of the northwest quarter and the west half of the southeast quarter of the southwest quarter of section 34, in township 8 south and in range 1 east, in said Williamson county, containing 140 acres, made and delivered to said Carbondale Coal and Coke Company a lease of said lands for the purpose of mining and removing the coal underlying the same, a copy of which lease is hereto attached as Exhibit F of this petition.

50 That as the owner in fee of said lands said Tinsley Priddy was entitled to the rents and royalties which accrued or became due by virtue of said lease from the date thereof till the death of said Tinsley Priddy, who died intestate in said Williamson county on or about the 1st day of April, A. D. 1885, seized and possessed in fee of the aforesaid lands so leased by him. He left surviving him Sarah Priddy, his widow, who also became and is administratrix of his estate, and the following children who join in this petition, to wit: Pettus Priddy, Burke Priddy, Elizabeth Ennis, *ne-* Priddy; Amanda Griffith, *ne-* Priddy; Mary Walker, *ne-* Priddy; Catherine McCree, *ne-* Priddy, and Amanda Priddy and Ida Priddy, who are minors, as hereinbefore stated, and also Angeline Gerralds, *ne-* Priddy (who does not join in this petition), as his only heirs-at-law, who are the owners in fee and tenants in common of said lands, subject to the dower and homestead rights of said Sarah Priddy therein.

Your petitioners further state that prior to the making and delivery of the five aforesaid leases, to wit, in the year A. D. 1871, the aforesaid grantors or makers of said leases had severally leased the same lands for the same purposes to Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, all of which last-named leases, though made by different parties and describing or leasing different lands,

51 and perhaps bearing different dates, were in all other respects identical in form and substance, the same terms and conditions being common to all of them, and a copy of one of them, that made by George T. Johnson (which will serve for all), is hereto attached as Exhibit A of this petition.

By reference to said last-described lease it will appear that the grantees therein undertook to pay to the grantors of each lease after the first year and until actual*ly* mining operations should be commenced (on their lands severally) an annual rental of ten dol-

lars on each tract of 40 acres so leased; and by each of the aforesaid leases made to the said Carbondale Coal and Coke Company it is provided that "in lieu of the annual rent of ten dollars reserved and to be paid to the said party of the first part after the first year and until actual mining operations are commenced, as is specified in the aforesaid recorded instrument, the said party of the second part (the Carbondale Coal and Coke Company), its successors or assigns, shall pay annually on the first day of January to the said party of the first part, their heirs or other legal representatives who at the time shall be legally entitled to the life estate or fee-simple ownership of the land, the sum of one dollar for each acre of the
52 tract or surveyed subdivision out of which no coal shall at that time have been mined and removed.

"And it is further agreed that if at any time said party of the second part, its successors or assigns, shall be in default and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written demand therefor by the party legally entitled to demand and receive the same, the party of the second part, its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which said unpaid sum shall have become due, and after such default and demand as aforesaid the party legally entitled to the life estate or fee-simple ownership of said land may at once or at any time thereafter enter into the exclusive possession thereof, the mines and all the appurtenances thereunto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives."

Your petitioner, William Henderson, avers that by virtue of the said lease marked Exhibit B on the 1st day of January, A. D. 1885, there became and was due to him from the said coal and coke company and from its successor, John W. Harrison, the receiver of said company, the sum of eighty dollars as advance rent or roy-
53 alty accrued for the year A. D. 1884 on the east half of the southeast quarter of section thirty-three, in township 8 south, in range 1 east, in said Williamson county, containing 80 acres (see Exhibit G); that on said 1st day of January, A. D. 1885, he demanded in writing of and from said coal and coke company and of and from John W. Harrison, the receiver of said company, the payment of said eighty dollars; a copy of said written demand is hereto attached as Exhibit M of this petition, and the affidavit of said William Henderson is also attached as Exhibit O of this petition.

Petitioner, William Henderson, avers that on said 1st day of January, A. D. 1885, he was legally entitled to demand and receive said $80.00; that the same is still due and unpaid, and that said coal and company and its said successor, John W. Harrison, receiver thereof, *has* been in default and *has* failed to pay said rent or royalty for more than ten days, and *is* still in default; by means whereof "all right of said coal and coke company, its successors or assigns, to mine in or otherwise hold or enjoy said tract or tracts of lands became forfeited and ended," and the said William Henderson "has entered into the exclusive possession thereof and holds the same free

54 and discharged of every and all claims of the said coal and coke company, its successors, assigns, or other legal representatives.

Your petitioner, Joseph Waldron, avers that by virtue of the lease marked Exhibit C on the 1st day of January, A. D. 1885, there became and was due to him from said coal and coke company and from its successor, John W. Harrison, the receiver of said company, the sum of forty dollars as advance rent or royalty accrued for the year A. D. 1884 on the southwest quarter of the southeast quarter of section 33, in township 8 south, in range 1 east, in said Williamson county, containing 40 acres. (See Exhibit H of this petition.)

That on said first day of January, A. D. 1885, being the owner in fee of said lands and legally entitled to demand and receive said advance rent or royalty, he demanded in writing of and from said company and of and from the aforesaid receiver the payment of said forty dollars, less the amount received by him in goods at said company's store, in Carterville, Illinois, as part payment of said advance rent or royalty; and he avers that the amount so received by him in goods was and is $6.66, and that there is still due and unpaid of said sum of $40.00 the sum of $33.34. See Exhibit H and Exhibits N and O of this petition.

55 That said coal and coke company and its successor, John W. Harrison, receiver thereof, *has* been in default and *has* failed to pay said balance of $33.34 of rent or royalty for more than ten days, and *is* still in default; by means whereof "all right of said coal and coke company, its successors or assigns, to mine in or otherwise hold or enjoy said tract of land became forfeited" and ended, and the said Joseph Waldron has entered "into the exclusive possession thereof and holds the same free and discharged of every and all claims of the said coal and coke company, its successors, assigns, or other legal representatives."

Your petitioner, George T. Johnson, avers that by virtue of the lease made by him to said coal and coke company, marked Exhibit D, on the 1st day of January, A. D. 1885, there became and was due to him from said company and from its successor, John W. Harrison, the receiver of said company, the sum of $120.00 as advance rent or royalty accrued for the year 1884 on the lease of the S. E. ¼ of the N. W. qr. and the N. E. ¼ of the S. W. qr. and the N. W. ¼ of the S. E. qr. of section 34, in township 8 south, in range 1 east, in said Williamson county, containing 120 acres; and afterwards, on the 2nd day of February, A. D. 1885, the said sum of $120.00 being still due and unpaid (see Exhibit I of this peti-

56 tion), and the said George T. Johnson being the owner in fee of said lands and legally entitled to demand and receive the payment of said $120.00, demanded in writing of and from the said coal and coke company and of and from its successor, the said John W. Harrison, the receiver of said company, the payment of the said sum of $120.00. (See copy of said demand, marked Exhibit P, and affidavit of mailing same, marked Exhibit S, and return registry receipt, marked Exhibit T.)

Petitioner, George T. Johnson, avers that said $120.00 is still due

and unpaid, and that the said coal and coke company and its successor, John W. Harrison, receiver thereof, have been in default and have failed to pay said $120.00 rent or royalty for more than ten days after written demand of the same; by means whereof all right of said coal and coke company, " its successors or assigns, to mine in or otherwise hold or enjoy said tracts of land or either of them became forfeited " and ended, and the said George T. Johnson has " entered into the exclusive possession thereof and now holds the same free and discharged of every and all claims of said coal and coke company, its successors, assigns, or other legal representatives."

57 Your petitioners, Catherine Waldron, David Waldron, Jr., Henry Waldron, and Catherine Waldron, Jr., aver that by virtue of the lease made by said Catherine Waldron and others to said coal and coke company, the copy of which is marked Exhibit E of this petition, on the 1st day of January, A. D. 1883, and on the 1st day of January, A. D. 1884, and on the 1st day of January, A. D. 1885, respectively, by virtue of said lease, there became and was due to said Catherine Waldron and David Waldron, Jr., the sum of $105.00 as rent or royalty accrued for the years A. D. 1882, A. D. 1883, and A. D. 1884, respectively, on the lease of the west half of the northwest quarter of section 3 and the northeast quarter of the northeast quarter of section 4, in township nine south, in range 1 east, in said Williamson county, containing 105 acres, being $315.00 for said 3 years; and said last-named petitioners further aver that on the 1st day of January, A. D. 1885, there being so due to said Catherine Waldron and David Waldron, Jr., the said sum of $315.00, afterwards, on the 2nd day of February, A. D. 1885, the same being still due and unpaid, and the said Catherine Waldron and David Waldron, Jr., being then and there legally entitled to demand and receive payment of the said $315.00, demanded in writing the payment of the same of and from said coal and coke company and of and from its successor, John W. Harrison,

58 receiver of said company. (See Exhibits K, Q, S, & T of this petition.)

Petitioners, Catherine Waldron and David Waldron, Jr., aver that said $315.00 is still due and unpaid, and that said coal and coke company and its successor, John W. Harrison, receiver of said company, have been in default and have failed to pay said $315.00 rent or royalty for more than ten days after said demand.

By means whereof " all right of said coal and coke company, its successors or assigns, to mine in or otherwise hold or enjoy said trusts, land, or either of them became forfeited and ended," and said Catherine Waldron and David Waldron have " entered into the exclusive possession thereof and now hold the same free and discharged from every and all claims of the said Carbondale Coal and Coke Company, its successors, assigns, or other legal representatives."

Your petitioners, Sarah Priddy and the aforesaid children and heirs-at-law of Tinsley Priddy, dec'd, aver that by virtue of the lease made by him to said coal and coke company (see Exhibit F) there

became and was due from it and from its successor, John W. Harrison, receiver of said company, to the said Tinsley Priddy on the 1st day of January, A. D. 1885, the sum of $140.00 as rent or
59 royalty accrued for the year 1884 on the 140 acres of land described in said lease; that afterwards, on the 2nd day of February, A. D. 1885, said $140.00 being still due and unpaid, and said Tinsley Priddy, as owner in fee of said lands and party to said lease, being then and there legally entitled to demand and receive the payment of said $140.00, demanded in writing the payment of the same of and from said coal and coke company and of and from its successor, John W. Harrison, receiver of said company. See Exhibits L, R, S, T of this petition. And afterwards, on the 1st day of April, A. D. 1885, said Tinsley Priddy died intestate in said Williamson county, leaving said Sarah Priddy as his widow, who, on the 13th day of April, A. D. 1885, became and still is administratrix of his estate, and she avers that said $140.00 was not paid to said Tinsley Priddy in his lifetime nor to her, as administratrix or otherwise, since the death of said Tinsley Priddy, but that the same is still due and unpaid; and the petitioners, the administratrix and the aforesaid heirs-at-law of Tinsley Priddy, dec'd, aver that said coal and coke company and its successor, John W. Harrison, receiver thereof, *was* in default and failed to pay said $140.00
60 for more than ten days after said written demand was made and before said Tinsley Priddy died; by means whereof all right of said coal and coke company, its successors or assigns, to mine in or otherwise hold or enjoy said tracts of land or either of them became forfeited and ended, and said Tinsley Priddy thereupon entered into the exclusive possession of said lands and held them till his death, and since his death his widow, Sarah Priddy, and his children aforesaid still hold said lands free and discharged from every and all claims of the Carbondale Coal and Coke Company, its successors, assigns, or other legal representatives.

Your petitioners further state that all of said leases were duly recorded in the recorder's office of said Williamson county, and although they had become forfeited and all rights of the Carbondale Coal and Coke Company, its successors and assigns, in or to the lands thereby leased have ended and no longer exist, yet those leases and the records thereof remain as a cloud upon the title of the several owners of said lands, and the said company and its receiver yet pretend to have some interests therein, which pre-
61 vents the petitioners from exercising and having full and complete enjoyment of their property as aforesaid.

The premises considered, your petitioners pray that your honorable court will adjudge, decree, and declare that each and every of said leases is absolutely forfeited and forever null and void and of no effect whatever and remove the said cloud from the title of your petitioners.

Petitioners pray such other and further relief, &c.; and as in duty bound will ever pray.

BARR AND WASHBURN,
Solicitors for Petitioners.

STATE OF ILLINOIS, }
Williamson County. }

William Henderson and Joseph Waldron, being first duly sworn, upon their oaths do say that they are two of the aforesaid petitioners, and that the matters and things stated in the foregoing petition are true to the best of their knowledge and belief.

This 16th day of July, A. D. 1885.

(Signed) WILLIAM HENDERSON.
JOSEPH WALDRON.

STATE OF ILLINOIS, }
Williamson County. }

I, R. H. H. Hampton, a notary public in and for said county and State, do hereby certify that the above affidavit was subscribed and sworn to before me by the said William Henderson and Joseph Waldron on the 16th day of June, A. D. 1885.

[SEAL.] Witness my hand & notarial seal on this 16th day of July, A. D. 1885.

R. H. H. HAMPTON,
Notary Public.

(Indorsed :) Filed July 17, 1885. J. A. Jones, clerk.

62 EXHIBIT "A."

EXHIBIT A TO PETITION OF HENDERSON ET AL.

Filed September 21st, 1871, at 1 o'clock p. m.

Agreement made and concluded this 28th day of March, 1871, between G. T. Johnson and F. M., his wife, of the first part, and Frank C. Chapman, Asgill Conner, and Andrew C. Bryden, of the second part, witnesseth :

That the said parties of the first part, for themselves, their heirs, executors, administrators, and assigns, as well for and in consideration of the covenants and agreements hereinafter mentioned to be performed and kept by and on the part of the said parties of the second part as for and in consideration of the sum of one dollar to each of them in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, hath demised, leased, and to mine let, and doth hereby demise, lease, and to mine let, unto the said Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, their successors and assigns, all the coal or other mineral or mineral substances contained in or under that certain peice or parcel of land being the N. E. S. W. ¼, S. E. N. W. ¼, and the N. W. of the S. E. ¼, section 34, town. 8 south, range one east, 3rd principal meridian, in the county of Williamson and State of Illinois, and
63 containing one hundred and twenty acres, more or less, the coal hereby leased to include all the coal that can be economically

mined or taken out from the above-described premises, together with the right to enter upon and into said lands and to dig, mine, and remove said coal or other mineral substances or any part thereof in such manner as they may desire; and the said parties of the first part doth hereby lease and grant to the said parties of the second part, their successors and assigns, without charge, the right of way and use of the land for a railroad, mine roads, wagon roads, turnouts, switches, shafts, slopes, tunnels, ditches, and drains — they may find it necessary or convenient to construct upon or across said tract for the proper mining of said coal, provided the same shall not be located within a garden inclosure or in any way interfere with dwelling-houses *other* other buildings; also the use of land for piling coal or culm and for preparing and forwarding the coal to be mined under this agreement, together with the right to take, without charge, from said lands all the earth and other material required in the construction of a railroad through said tract; and it is further
64 agreed and understood that the parties of the second part, their successors and assigns, may use and occupy the rights and privileges thereby granted and the openings, fixtures, and appurtenances made and constructed for the mining, preparing, and forwarding coal from any adjoining or contiguous lands until all the lands that they may desire to take coal from and that can be mined and taken out through said openings, shafts, and tunnels shall be exhausted; that the parties of the second part, their successors and assigns, shall have the right to rebuild, reconstruct, or remove any or all of the buildings, fixtures, appurtenances, and improvements during the continuance of this agreement and until the coal in the adjoining and contiguous land that can be worked from their openings, slopes, and tunnels shall have been worked out, the removal of buildings, fixtures, and appurtenances to be made within a reasonable time after the lands shall have been exhausted; that the parties of the first part shall pay all the taxes on lands hereby leased, and that the said parties of the second part all taxes on their buildings and improvements, and the said parties of the second part, their successors and assigns, hereby covenant and agree to pay to the
65 said parties of the first part or their legal representatives by the fifteenth of each month the sum of five (5) cents per ton for every ton of 2,000 lbs. of good, clean merchantable coal mined and sold under this lease during the preceding months, but not to pay any royalty for any nut coal or culm that may pass through a screen of one-inch mesh; and — is hereby further agreed and understood that after the expiration of the first year the said parties of the second part shall pay to the said parties of the first part an annual rent of ten dollars until actual mining operations are commenced either upon the lands hereby leased or upon adjoining or contiguous lands through which the coal herein intended to be conveyed may be mined and removed, a failure to make such payment to render this agreement null and void; and to the faithful performance of this contract the said parties hereby bind themselves, their heirs, executors, and assigns.

In witness whereof we hereunto subscribe our names and affix our seals the day and year first above written.

his
G. T. x JOHNSON. [L. S.]
mark.
F. M. JOHNSON. [L. S.]
FRANK J. CHAPMAN. [L. S.]
66 A. CONNER. [L. S.]
ANDREW C. BRYDEN. [L. S.]

Witness:
LABON CARTER.

Personally appeared before me the within-named parties and acknowledged that they had signed the within-described instrument for the purposes therein mentioned.

JAMES SCOTT, *J. P.* [L. S.]

Sept. 5th, 1871.

STATE OF ILLINOIS, }
Williamson County, } *ss.:*

—, H. Hendrickson, clerk of the circuit court within and for the county of Williamson and State of Illinois, do hereby certify that the above and foregoing is a true, correct, and complete copy of the mining lease as appears from Deed Record Z, page 53, of the records of Williamson county.

In witness whereof I have hereunto set my hand and the [SEAL.] seal of said circuit court, at office, in Marion, in said county, this 10th day of July, A. D. 1885.

H. HENDRICKSON, *Clerk.*

(Endorsed:) Filed July 17, 1885. J. A. Jones, clerk.

67 EXHIBIT B.

EXHIBIT B TO PETITION OF HENDERSON ET AL.

APRIL 12, A. D. 1873.

Whereas by an instrument executed the 18th day of March, A. D. 1871, by and between Nancy Priddy, who is the widow of Peters Priddy, deceased, and the mother and guardian of the minors hereinafter named, the children and heirs of said Peters Priddy, of the first part, and Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, of the second part, recorded 21st day of September, 1871, in the office for the record of deeds and other instruments of writing in Williamson county, Ill., in Record Book Z, page 61, said parties did mutually agree and covenant for the consideration therein mentioned that said parties of the second part, their successors and assigns, shall have the right at any time to enter upon and into the premises hereinafter described, and to mine and remove all the coal and other minerals and mineral substances contained upon, within, or under tract of land known as the east half of the southeast

quarter of section 33, township eight south, of range one east, of the third principal meridian, in said county and State, containing 80 acres, more or less, with all the privileges and upon the conditions
68 mentioned in the aforesaid instrument, which since then has been assigned by said parties of the second part to the Carbondale Coal and Coke Company, a corporation of which Andrew C. Bryden is now president: Now, therefore, and for their mutual benefit, said Nancy Priddy, for herself and as guardian of Belina, Rodey, Henry, Martha, and Susan, children and minor heirs of Peters Priddy, deceased, parties of the first part, and the said Carbondale Coal and Coke Company, now the party of the second part, have agreed and do hereby mutually covenant that said party of the second part, its successors and assigns, shall continue in the possession, have, hold, and enjoy all the privileges and mining rights specified in the aforesaid instrument and covenants until all the coal and minerals contained within, under, or upon said tract of land shall have been mined, worked out, and removed therefrom, upon the same terms and subject to the same conditions as are specified in said recorded instrument, with this change made and agreed upon as an amendment therein and thereto, to wit: Instead of the payment of five cents per ton for every ton of 2,000 lbs. of good, merchantable
69 coal mined during the preceding months to be made to said parties of the first part or their legal representatives by the 15th of each succeeding month, the party of the second part, its successors and assigns, shall pay said royalty of five cents per ton for said coal mined as aforesaid to said party of the first part, their heirs or assigns, who shall be legally entitled at the time of payment to the life estate *of* fee-simple ownership of the land wherein said coal was mined, the first day of the second month succeeding the month for which the royalty so paid shall have accrued—that is to say, the royalty of five cents per ton due for coal mined in the month of January shall be due and payable on the first day of March following, and for coal mined in the month of February on the first day of the following April, and so on in the same way in regard to all the other monthly payments, and the *and the* amount of coal mined and the sum due for royalty thereon each month in the year shall be shown by the books of the party from whom the royalty becomes due, verified by affidavit of the truth thereof, if so required by the party entitled to said monthly payment, and in lieu of the annual rent of ten dollars reserved and to be paid to the said party of the first part after the first year and
70 until actual mining operations are commenced, as is specified in the aforesaid recorded instrument, the said party of the second part, its successors or assigns, shall pay annually, on the first day of January, to said party of the first part, their heirs or other legal representatives who at the time shall be legally entitled to the life estate or fee-simple ownership of the land, the sum of one dollar for each acre of the tract or survey subdivisions out of which no coal shall at that time have been mined and removed, and all payment of rent so made shall be credited and allowed as an advance payment of the royalty of five cents per ton of 2,000 lbs., reserved

as aforesaid, and shall be deducted, without interest, in installments not exceeding at any time when deducted one-half of the whole sum due in the monthly payment for the royalty from which said instalment is deducted; and it is further agreed that if at any time said party of the second part, its successors or assigns, shall be in default and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written demand therefor by the party
71 legally entitled to demand and receive the same the party of the second part, its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which said unpaid — shall have become due, and after such default and demand as aforesaid the party legally entitled to the life estate or fee-simple ownership of said land may at once or at any time thereafter enter into the exclusive possession thereof—the mines and all the appurtenances thereunto belonging—and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives; and it is also agreed said party of the second part, its successors and assigns, when not indebted for rent or royalty therefor, may, at any time after three months' previous written notice of an intention so to do, deliver to the party or the agent of the party legally entitled to the life estate or fee-simple ownership thereof *surrender* any tract or surveyed subdivision of the land hereinbefore described, and thereupon shall become released from all further payments for rent or royalty on the tract or
72 subdivision so surrendered to the owner thereof.

In witness whereof said parties of the first and second part have subscribed and affixed their seals in duplicate this fifth day of April, A. D. 1873.

her
NANCY x PRIDDY, [SEAL.]
mark.
Guardian of the Minor Heirs of Pettus Priddy, Deceased.
CARBONDALE COAL & COKE COMPANY,
[L. S.] By ANDREW C. BRYDEN.

STATE OF ILLINOIS, } *ss:*
Williamson County, }

I, James Scott, a justice of the peace in and for said county, do hereby certify that Nancy Priddy, for herself and as guardian of the minor heirs of Pettus Priddy and Andrew C. Bryden, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their voluntary act for the uses and purposes therein set forth; and the said Andrew C. Bryden, being also personally known to me to be the president of the Carbondale Coal
73 & Coke Company, furthermore declare before me that he had so executed, sealed with the corporate seal, and delivered said

instrument for and on behalf of said company by authority and direction of its board of directors.

Given under my hand and seal this fifth day of April, A. D. 1873.

JAMES SCOTT, *J. P.* [SEAL.]

STATE OF ILLINOIS, }
Williamson County, } *ss:*

—, Hartwell Hendrickson, clerk of the circuit court within and for the county of Williamson and State of Illinois, do hereby certify that the above and foregoing is a true, correct, and complete copy of a certain instrument or lease as appears from Deed Record 1, pages 328, 329, & 330, of Williamson county.

In witness whereof I have hereunto set my hand and the seal of said circuit court, at office, in Marion, in said county, this 16th day of July, A. D. 1885.

[SEAL.] HARTWELL HENDRICKSON, *Clerk.*

(Endorsed:) Filed July 17, 1885. J. A. Jones, clerk.

74 EXHIBIT "C."

EXHIBIT "C" TO PETITION OF HENDERSON ET AL.

APRIL 14TH, A. D. 1873.

Whereas by an instrument executed the 25th day of March, A. D. 1871, by and between Joseph Waldron and Amanda A. Waldron, his wife, of the first part, and Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, of the second part, recorded the 21st day of September, 1871, in the office for the record of deeds and other instruments of writing in Williamson county, Illinois, in Record Book Z, page 45, said parties did mutually agree and covenant, for the consideration therein mentioned, that said parties of the second part, their successors and assigns, shall have the right at any time to enter upon and into the premises hereinafter described and to mine and remove all the coal and other mineral and mineral substances contained upon, within, or under tract of land known as the southwest quarter of the southeast quarter of section thirty-three, township eight south, of range one east, of the third principal meridian, in said county and State, containing 40 acres, more or less, with all the privileges and upon the conditions mentioned in the aforesaid instrument, which since then has been duly assigned by said parties of the second part to the Carbondale Coal and Coke Com-
75 pany, a corporation, of which Andrew C. Bryden is now president: Now, therefore, and for the mutual benefit of Thomas Waldron and Barbary Waldron, his wife, who are now the owners of the land herein described and now the parties of the first part, and the said Carbondale Coal & Coke Company, now the party of the second part, have agreed and do hereby mutually covenant that said party of the second part, its successors and assigns, shall continue in the possession, have, hold, and enjoy all the privileges and

mining rights specified in the aforesaid instrument and covenants until all the coal and minerals contained within, under, or upon said tract of land shall have been mined, worked out, and removed therefrom upon the same terms and subject to the same conditions as are specified in said recorded instrument, with this change made and agreed upon as an amendment therein and thereto, to wit: Instead of the payment of five cents per ton for every ton of 2,000 lbs. of good, merchantable coal mined during the preceding month to be made to said parties of the first part or their legal representatives by the 15th of each succeeding month the party of the second part, its
76 successors and assigns, shall pay said royalty of five cents per ton for said coal mined as aforesaid to said party of the first part, their heirs or assigns, who shall be legally entitled to the life estate or fee-simple ownership of the land whereon said coal was mined the first day of the second month succeeding the month for which the royalty so paid shall have accrued—that is to say, the royalty of five cents per ton due for coal mined in the month of January shall be due and payable the first day of March next following, and for coal mined in the month of February on the first day of the following April, and so on in the same way in regard to all other monthly payments, and the amount of coal mined and the sum due for royalty thereon each month in the year shall be shown by the books of the party from whom the royalty becomes due, verified by affidavit of the truth thereof, if so required by the party entitled to said monthly payments; and in lieu of the annual rent of ten dollars reserved and to be paid to said party of the first part after the first year and until actual mining operations are commenced,
77 as is specified in the aforesaid recorded instrument, the said party of the second part, its successors or assigns, shall pay annually, on the first day of January, to said party of the first part, their heirs or other legal representatives who at the time shall be legally entitled to the life estate or fee-simple ownership of the land, the sum of one dollar for each acre of the tract or surveyed subdivision out of which no coal shall at that time have been mined and removed, and all payments of rent so made shall be credited and allowed as an advance payment of the royalty of five cents per ton of 2,000 lbs., reserved as aforesaid, and shall be deducted without interest in instalments not exceeding at any one time, when deducted, one-half of the whole sum due in the monthly payment for the royalty from which said instalment is deducted.

And it is furthermore agreed that if at any time said party of the second part, its successors or assigns, shall be in default and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written demand therefor by the party legally entitled to demand and receive the same, the party of the second part,
78 its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which unpaid sum shall have become due, and after such default and demand as aforesaid the party legally entitled to the life estate or fee-simple ownership of said land may at once or at any time thereafter enter into the exclusive possession

thereof, the mines and all the appurtenances thereunto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives; and it is also agreed said party of the second part, its successors and assigns, when not indebted for rent or royalty therefor, may, at any time after three months' previous written notice of an intention so to do, delivered to the party or the agent of the party legally entitled to the life estate or fee-simple ownership thereof, surrender any tract or surveyed subdivision of the land hereinbefore described, and thereupon shall become released from all further payments for rent or royalty on the tract or subdivision so surrendered to the owner thereof.

In witness whereof said parties of the first and second part have subscribed and affixed their seals in duplicate this eleventh day of March, A. D. 1873.

his
THOMAS x WALDRON. [SEAL.]
mark.

her
79 BARBARY x WALDRON. [SEAL.]
mark.

[L. S.] CARBONDALE COAL & COKE COMPANY,
By ANDREW C. BRYDEN, *President.*

STATE OF ILLINOIS, }
Williamson County, } *ss:*

I, James Scott, a justice of the peace in and for said county, do hereby certify that Thomas Waldron and Barbary Waldron, his wife, and Andrew C. Bryden, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their voluntary act for the uses and purposes therein set forth.

And the said Andrew C. Bryden, being also personally known to me to be the president of the Carbondale Coal and Coke Company, furthermore declare- before me that he had so executed, sealed with the corporate seal, and delivered said instrument for and on
80 behalf of said company by authority and direction of its board of directors.

Given under my hand and seal this 11th day of March, A. D. 1873.
JAMES SCOTT, *J. P.* [SEAL.]

STATE OF ILLINOIS, }
Williamson County, } *ss:*

I, Hartwell Hendrickson, clerk of the circuit court within and for the county of Williamson and State of Illinois, do hereby certify that the above and foregoing is a true, correct, and complete copy of a certain lease executed by Thomas Waldron and Barbary Waldron *and* to the Carbondale Coal and Coke Company, as appears from Deed Record I, pages 231, 232, & 233, of the records of Williamson county.

In witness whereof I have hereunto set my hand and the seal of said circuit court, at office, in Marion county, this 15th day of July, A. D. 1885.

HARTWELL HENDRICKSON, *Clerk.*

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

81 EXHIBIT "D."

EXHIBIT "D" TO PETITION OF HENDERSON ET AL.

APRIL 11, A. D. 1873.

Whereas by *and* instrument executed the 28th day of March, A. D. 1871, by and between George T. Johnson and Francis M. Johnson, his wife, of the first part, and Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, of the second part, recorded the 21st day of September, 1871, in the office for the record of deeds and other instruments of writing in Williamson county, Illinois, in Record Book Z, page "53," said parties did mutually agree and covenant, for the consideration therein mentioned, that said parties of the second part, their successors and assigns, shall have the right at any time to enter upon and into the premises hereinafter described, and to mine and remove all the coal and other minerals and mineral substances contained upon, within, or under tracts of land known as the northeast quarter of the southwest quarter and the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter of section thirty-four, township eight south of range one east, of the third principal meridian, in said county and State, containing 120 acres, more or less, with all the privileges and upon the conditions men-
82 tioned in the aforesaid instrument, which since then has been duly assigned by said parties of the second part to the Carbondale Coal and Coke Company, a corporation of which Andrew C. Bryden is now president: Now, therefore, and for their mutual benefit, said George T. Johnson and Francis M. Johnson, his wife, parties of the first part, and the said Carbondale Coal and Coke Company, now the party of the second part, have agreed and do hereby mutually covenant that said party of the second part, its successors and assigns, shall continue in the possession, have, hold, and enjoy all the privileges and mining rights specified in the aforesaid instrument and covenants until all the coal and minerals contained within, under, or upon said tracts of land shall have been mined, worked out, and removed therefrom, upon the same terms and subject to the same conditions as are specified in said recorded instrument, with this change made and agreed upon as amendment therein and thereto, to wit: Instead of the payment, five cents per ton of 2,000 lbs. of good merchantable coal mined during the preceeding month to be made to said parties of the first part or their legal representatives by the 15th of each succeeding month, the party of
83 the second part, its successors and assigns, shall pay said royalty of five cents per ton for said coal mined as aforesaid to

said party of the first part, their heirs or assigns, who shall be legally entitled at the time of payment to the life estate or fee-simple ownership of the land wherein said coal was mined the first day of the second — succeeding the month for which the royalty so paid shall have accrued—that is to say, the royalty of five cents per ton due for coal mined in the month of January shall be due and payable the first day of March next following, and for coal mined in the month of February on the first day of the following April, and so on in the same way in regard to all other monthly payments; and the amount of coal mined and the sum due for royalty thereon each month in the year shall be shown by the books of the party from whom the royalty becomes due, verified by affidavit of the truth thereof, if so required by the party entitled to said monthly payments; and in lieu of the annual rent of ten dollars reserved and to be paid to said party of the first part after the first year and until actual mining operations are commenced, as is specified in the
84 aforesaid recorded instrument, the said party of the second part, its successors or assigns, shall pay annually, on the first day of January, to said party of the first part, their heirs or other legal representatives who at the time shall be legally entitled to the life estate or fee-simple ownership of the land, the sum of one dollar for each acre of the tract or surveyed subdivision out of which no coal shall at that time have been mined and removed, and all payments of rent so made shall be credited and allowed as an advance payment of royalty of five cents per ton of 2,000 lbs. reserved as aforesaid, and shall be deducted, without interest, in instalments not exceeding at any one time, when deducted, one-half of the whole *some* due in the monthly payment for the royalty from which said instalment is deducted.

And it is furthermore agreed that if at any time said party of the second part, its successors or assigns, shall be in default and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written demand therefor by the party legally en-
85 titled to demand and receive the same, the party of the second part, its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which said unpaid sum shall have become due; and after such default and demand as aforesaid the party legally entitled to the life estate or fee-simple ownership of said land may at once or any time thereafter enter into the exclusive possession thereof, the mines and all the appurtenances thereunto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives; and it is also agreed said party of the second —, its successors and assigns, when not indebted for rent or royalty therefor, may, at any time after three months' previous written notice of an intention so to do, deliver to the party or the agent of the party legally entitled to the life estate or fee-simple ownership thereof, surrender any
86 tract or surveyed subdivision of the land hereinbefore described, and thereupon shall become released from all further

payments for rent or royalty on the tract or subdivision so surrendered to the owner thereof.

In witness whereof said parties of the first and second part have subscribed and affixed their seals in duplicate this 15th day of March, A. D. 1873.

his
GEORGE T. x JOHNSON. [SEAL.]
mark.
F. M. JOHNSON. [SEAL.]
CARBONDALE COAL & COKE COMPANY,
[L. S.] By ANDREW C. BRYDEN, *President.*

STATE OF ILLINOIS, }
Williamson County. }

I, James Scott, a justice of the peace in and for said county, do hereby certify that George T. Johnson and Francis M. Johnson, his wife, and Andrew C. Bryden, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instru-
87 ment as their voluntary act for the uses and purposes therein set forth; and the said Andrew C. Bryden, being also personally known to me to be the president of the Carbondale Coal and Coke Company, furthermore declare- before me that he had so executed, sealed with the corporate seal, and delivered said instrument for and on behalf of said company by authority and direction of its board of directors.

Given under my hand and seal this 15th day of March, A. D. 1873.

—— ——.

STATE OF ILLINOIS, }
Williamson County, } *ss:*

I, —— Hendrickson, clerk of the circuit court within and for the county of Williamson and State of Illinois, do hereby certify that the above and foregoing is a true, correct, and complete copy of mining lease as appears from Deed Record I, page 317, of the records of Williamson county.

In witness whereof I have hereunto set my hand and the seal of said circuit court, at office, in Marion, in said county, this 10th day of July, A. D. 1885.

H. HENDRICKSON, *Clerk.*

(Endorsed:) Filed July 17, 1885. J. A. Jones, clerk.

88 EXHIBIT "E."

EXHIBIT E TO PETITION OF HENDERSON ET AL.

APRIL 12TH, A. D. 1873.

Whereas by an instrument executed the 18th day of March, A. D. 1871, by and between Catharine Waldron, who is the widow of Henry Waldron, deceased, and the mother and guardian of the minor- here-

inafter named, the children and heirs of said Henry Waldron, of the first part, and Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, of the second part, recorded the 21st day of September, 1871, in the office for the record of deeds and other instruments of writing in Williamson county, Illinois, in Record Book Z, page 57, said parties did mutually agree and covenant, for the consideration therein mentioned, that said parties of the second —, their successors and assigns, shall have the right at any time to enter upon and into the premises hereinafter described and to mine and remove all the coal and other minerals and mineral substance contained upon, within, or under tracts of land known as the west half of the north-
west quarter of section three and the northeast quarter
89 of the northeast quarter of section four, township nine south, of
range one east, of the third principal meridian, in said county and State, containing 105 acres, more or less, with all the privileges and upon the conditions mentioned in the aforesaid instrument, which since then has been duly assigned by said parties of the second part to the Carbondale Coal & Coke Company, a corporation, of which Andrew C. Bryden is now president: Now, therefor-, and for their mutual benefit, said Catharine Waldron and May Waldron and Catharine Waldron, guardian of Jacob, David, Martha, Henry, and Catharine, children and minor heirs of Henry Waldron, deceased, parties of the first part, and the said Carbondale Coal & Coke Company, now the party of the second part, have agreed and do hereby mutually covenant that said party of the second part, its successors and assigns, shall continue in the possession, have,
hold, and enjoy all the privileges and mining rights specified
90 in the aforesaid instrument and covenants until all the coal
and minerals contained within, under, or upon said tracts of land shall have been mined, worked out, and removed therefrom upon the same terms and subject to the same conditions as are specified in said recorded instrument, with this change made and agreed upon as an amendment therein and thereto, to wit: Instead of the payment of five cents per ton for every ton of 2,000 lbs. of good, merchantable coal mined during the preceeding month to be made to said parties of the first part or their legal representatives by the 15th of each succeeding month, the party of the second part, its successors and assigns, shall pay said royalty of five cents per ton for said coal mined as aforesaid to said party of the first part, their heirs *of* assigns who shall be legally entitled at the time of payment to the
life estate or fee-simple ownership of the land wherein said coal
91 was mined the first day of the second month succeeding the
month for which the royalty so pa*y*ed shall have accrued—that is to say, the royalty of five cents per ton due for coal mined in the month of January, shall be due and payable the first day of March next following, and for coal mined in the month of February on the first day of the following April, and so on in the same way in regard to all other monthly payments; and the amount of coal mined and the sums due for royalty thereon each month in the year shall be shown by the books of the party from whom the royalty becomes due, verified by affidavit of the truth thereof, if so required by the party entitled to said monthly payments; and in lieu

of the annual rent of ten dollars reserved and to be paid to said party of the first part after the first year and until actual mining operations are commenced, as is specified in the aforesaid recorded instrument, the said party of the second part, its successors
92 or assigns, shall pay annually on the first day of January to said party of the first part, their heirs or other legal representations who at the time shall be legally entitled to the life estate or fee-simple ownership of the land, the sum of one dollar for each acre of the tract or surveyed subdivision out of which no coal shall at that time have been mined and removed, and all payments of rent so made shall be credited and allowed as an advance payment of the royalty of five cents per ton of 2,000 lbs. reserved as aforesaid, and shall be deducted without interest in installments not exceeding at any one time, when deducted, one-half of the whole sum due in the monthly payment for the royalty from which said installment is deducted; and it is furthermore agreed that if at any time said party of the second part, its successors or assigns, shall be in -fault and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written
93 demand therefor by the party legally entitled to demand and receive the same, the party of the second part, its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which said unpaid sum shall have become due, and after such default and demand as aforesaid the party legally entitled to the life estate or fee-simple ownership of said land may at once or any time thereafter enter into the exclusive possession thereof, the mines and all the appurtenances thereunto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives; and it is also agreed said party of the second part, its successors and assigns, when not indebted for rent or royalty therefore, may at any time after three months' previous written notice of an intention so
94 to do deliver and to the party or the agent of the party legally entitled to the life estate or fee-simple ownership thereof surrender any tract or surveyed subdivision of the land hereinbefore described, and thereupon shall become released from all other payments for rent or royalty on the tract or subdivision so surrendered to the owner thereof.

In witness whereof said parties of the first and second part- have subscribed and affixed their seals, in duplicate, this fifth day of April, A. D. 1873.

her
CATHARINE x WALDRON. [SEAL.]
mark.
MARY WALDRON. [SEAL.]
her
CATHARINE x WALDRON, [SEAL.]
mark.
Guardian of the Aforesaid Minor Heirs.
CARBONDALE COAL & COKE COMPANY.
[L. S.] By ANDREW C. BRYDEN, *President.*

95 STATE OF ILLINOIS, } ss:
Williamson County, }

I, James Scott, a justice of the peace in and for said county, do hereby certify that Catharine Waldron and Mary Waldron and the said Catharine Waldron, the guardian of the minor heirs of Henry Waldron, and Andrew C. Bryden, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their voluntary act for the uses and purposes therein set forth; and the said Andrew C. Bryden, being also personally known to me to be the president of the Carbondale Coal & Coke Co., furthermore declared to me that he had so executed, sealed with the corporate seal, and delivered said instrument for and on behalf of said company by authority and direction of its board of directors.

Given under my hand and seal this fifth day of April, A. D. 1873.

JAMES SCOTT, *J. P.* [SEAL.]

96 STATE OF ILLINOIS, } ss:
Williamson County, }

I, H. Hendrickson, clerk of the circuit court within and for the county of Williamson and State of Illinois, do hereby certify that the above and foregoing is a true, correct, and complete copy of mining lease, as appears from Deed Record 1, page- 325, 326, 327 of the records of Williamson Co.

[SEAL.] In witness whereof I have hereunto set my hand and the seal of said circuit court, at office, in Marion, in said county, this 16th day of July, A. D. 1885.

H. HENDRICKSON, *Clerk.*

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

97 EXHIBIT "F."

EXHIBIT "F" TO PETITION OF HENDERSON ET AL.

Whereas by an instrument executed the 18th day of March, A. D. 1871, by and between Tinsley Priddy and Sarah Priddy, his wife, of the first part, and Frank J. Chapman, Asgill Conner, and Andrew C. Bryden, of the second part, recorded the 21st day of September, 1871, in the office for the record of deeds and other instruments of writing in Williamson county, Illinois, in Record Book Z, page 17, said parties did mutually agree and covenant, for the consideration therein mentioned, that said parties of the second part, their successors and assigns, shall have the right at any time to enter upon and into the premises hereinafter described and to mine and remove all the coal and other minerals and mineral substances upon, within, or under tracts of land known as the northwest quarter of the southwest quarter and the southwest quarter of the southwest quarter and the southwest quarter of the northwest quarter

and the west half of the southeast quarter of the southwest quarter of section thirty-four, township eight south, of range one east, of the third principal meridian, in said county and State, containing 140 acres, more or less, with all the privileges and upon the con-
98 ditions mentioned in the aforesaid instrument, which since then has been duly assigned by said parties of the second part to the Carbondale Coal & Coke Company, a corporation, of which Andrew C. Bryden is now president:

Now, therefore, and for their mutual benefit, said Tinsley Priddy and Sarah Priddy, his wife, parties of the first —, and the said Carbondale Coal & Coke Co., now the party of the second part, have agreed and do hereby mutually covenant that said party of the second part, its successors and assigns, shall continue in the possession, have, hold, and enjoy all the privileges and mining rights specified in the aforesaid instrument and covenants until all the coal and minerals contained within, under, or upon said tracts of land shall have been mined, worked out, and removed therefrom, upon the same terms and subject to the same conditions as are specified in said recorded instrument, with this change made and agreed upon as an amendment therein and thereto, to wit: Instead of the payment of five cents per ton for every ton of 2,000 lbs. of good, merchantable coal mined during the preceding month to be made to said parties of the first part or their legal representatives by the 15th of each
99 succeeding month, the party of the second part, its successors and assigns, shall pay said royalty of five cents per ton for said coal mined as aforesaid to said party of the first part, their heirs or assigns, who shall be legally entitled at the time of payment to the life estate or fee-simple ownership of the land wherein said coal was mined the first day of the second succeeding *the* month for which the royalty so paid shall have accrued—that is to say, the royalty of five cents per ton due for coal mined in the month of January shall be due and payable the first day of March next following and for coal mined in the month of February on the first day of the following April, and so on in the same way in regard to all other monthly payments, and the amount of coal mined and the sum due for royalty thereon each month in the year shall be shown by the books of the party from whom the royalty becomes due, verified by affidavit of the truth thereof if so required by the party entitled to said monthly payments, and in lieu of the annual rent of ten dollars reserved and to be paid to said party of the first part after the first year and until actual mining operations are commenced, as is specified in the aforesaid recorded instrument, the said
100 party of the second part, its successors or assigns, shall pay annually, on the first day of January, to said party of the first part, their heirs or other legal representative- who at the time shall be legally entitled to the life estate or fee-simple ownership of the land, the sum of one dollar for each acre of the tract or surveyed subdivision out of which no coal shall at that time have been mined and removed, and all payments or rents so made shall be credited and allowed as an advance payment of royalty of five cents per ton of 2,000 lbs. reserved as aforesaid, and shall be deducted with-

out interest in installments not exceeding at any one time when deducted one-half of the whole sum due in the monthly payment for the royalty from which said installment is deducted; and it is furthermore agreed that if at any time said party of the second part, its successors or assigns, shall be in default and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written demand therefor by the party legally entitled to demand and receive the same, the party of the second part, its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which said unpaid sum shall have become due, and after such default and
101 demand as aforesaid the party legally entitled to the life estate or fee-simple ownership of said land may at once or any time thereafter enter into the exclusive possession thereof, the mines and all the appurtenances thereunto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors or assigns and other legal representatives; and it is also agreed said party of the second part, its successors and assigns, when not indebted for rent or royalty therefore, may, at any time after three months previous to a written notice to do so deliver- to the party or the agent of the party legally entitled to the life estate or fee-simple ownership thereof, surrender any tract or surveyed subdivision of the land hereinbefore described, and thereupon shall become released from all other payments for rent or royalty on the tract or subdivision so surrendered to the owner thereof.

In witness whereof said parties of the first and second parts have subscribed and affixed their seals in duplicate this 8th day of March, A. D. 1873.

his
TINSLEY x PRIDDY. [SEAL.]
mark.

her
SARAH x PRIDDY. [SEAL.]
mark.

[L. S.] CARBONDALE COAL & COKE COMPANY,
By ANDREW C. BRYDEN, *President.*

THOMAS DARLING, *Witness.*

102 STATE OF ILLINOIS, }
Williamson County. }

I, James Scott, a justice of the peace in and for said county, do hereby certify that Tinsley Priddy and Sarah Priddy, his wife, and Andrew C. Bryden, who are personally known to me to be the same persons whose names are subscribed to the *following* instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their voluntary act for the uses and purposes therein set forth; and the said Andrew C. Bryden, being also personally known to me to be the president of the Carbondale Coal & Coke Company, furthermore declared before me that he had so executed, sealed with the corporate seal, and de-

livered said instrument for and on behalf of said company by authority and direction of its board of directors.

Given under my hand and seal this 8th day of March, A. D. 1873.

JAMES SCOTT, *J. P.* [SEAL.]

103 STATE OF ILLINOIS, } *ss:*
Williamson Co., }

I, H. Hendrickson, clerk of the circuit court within and for the county of Williamson and State of Illinois, do hereby certify that the above and foregoing is a true, correct, and complete copy of mining lease as appears from Deed Record 1, page- 310, 311, 312, of the records of Williamson county.

In witness whereof I have hereunto set my hand and [SEAL.] the seal of said circuit court, at office, in Marion, in said county, this 16th day of July, A. D. 1885.

H. HENDRICKSON, *Clerk.*

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

104 EXHIBIT G.

EXHIBIT G TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILLINOIS, *July* 15, 1885.

The Carbondale Coal & Coke Company to William Henderson, Dr.

1885, January 1st:

To advance royalty due and owing for the year 1884 by deed of covenant or mining lease of the lands hereinafter described, made by Haney Priddy, widow of Pettus Priddy, deceased, and guardian of his children, their minors, to the Carbondale Coal & Coke Company, dated on the 5th day of April, A. D. 1873, leasing to said company for mining purposes the east half of the southeast quarter of section 33, township 8 south, range one east, in Williamson Co., Illinois, 80 acres:

Advance royalty on said lease due and owing for 1884, $80.00.

STATE OF ILLINOIS, }
Williamson County. }

William Henderson, being *just* duly sworn, upon his oath says that he is and has been since the 31st day of December, A. D. 1883, the owner *of* fee simple of the lands described in the foregoing account, and that on the 1st day of January, A. D. 1885, there became and was due him from the Carbondale Coal & Coke Company and its successor the aforesaid sum of $80.00 as advance royalty on the aforesaid lease of said lands, and that said $80.00 is still due
105 and unpaid after allowing all just credits, demands, and set-offs.

This 15th day of July, A. D. 1885.

WILLIAM HENDERSON.

STATE OF ILLINOIS, }
Williamson County. }

The foregoing affidavit was subscribed and sworn to before me by William Henderson on this the 15th day of July, A. D. 1885. Witness my hand and notarial seal.

[SEAL.] R. H. H. HAMPTON,
Notary Public.

(Indorsed:) Filed. J. A. Jones, clerk.

106 EXHIBIT "H."

EXHIBIT H TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILLS., *July* 15, 1885.

The Carbondale Coal & Coke Company to Joseph Waldron, Dr.

1885, January 1st:

To advance royalty due and owing for the year 1884 by deed of covenant or mining lease of the lands hereinafter described, made by Thomas Waldron to the Carbondale Coal & Coke Company, dated on the 11th day of March, A. D. 1873, leasing to said company for mining purposes the southwest quarter of the southeast quarter of section 33, in township 8 south, in range one east, in Williamson county, Illinois, containing 40 acres:

Advance royalty on said lease due and owing for the year 1884	$40 00
Credit by amount of goods paid on said indebtedness	----
Balance due & unpaid	$33 34

STATE OF ILLINOIS, }
Williamson County. }

Joseph Waldron, being *just* duly sworn, upon his oath says that he is and *and* for about ten years last past has been the owner in fee simple of the lands described in the above account; that on the 1st day of January, A. D. 1885, there became and was due him from the Carbondale Coal & Coke Company and its successor the aforesaid sum of $40.00 as advance royalty on the aforesaid lease
107 of said lands, less the amount paid him in goods by said company on said amount, to wit, the sum of $6.00, and that the balance of $33.34 is still due and unpaid after allowing all just credits, demands, and set-offs.

This 15th day of July, A. D. 1885.

JOSEPH WALDRON.

STATE OF ILLINOIS, }
Williamson County. }

The *following* affidavit was subscribed and sworn to by Joseph

Waldron before me on this the 15th day of July, A. D. 1885. Witness my hand and notarial seal.

R. H. H. HAMPTON,
Notary Public.

[SEAL.]

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

108 EXHIBIT "I."

EXHIBIT I TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILL., *July* 15, 1885.

The Carbondale Coal & Coke Company to George T. Johnson & Francis M. Johnson, his wife, Dr.

1885, January 1st:

To advance royalty due and owing for the year 1884 by deed of covenant or mining lease (of the following-described lands), made by and between the said George T. Johnson and Francis M. Johnson, his wife, as parties of the first part, and the said Carbondale *Cole* & Coke Company, as party of the second part, and dated on the 15th day of March, A. D. 1873, leasing to said party of the second part for mining purposes the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section thirty-four (34), in township eight (8) south and in range one (1) east of the third principal meridian, 120 acres, more or less:

Advance royalty on said lease due and owing for A. D. 1884, $120.00.

STATE OF ILLINOIS, }
Williamson County. }

George T. Johnson, being duly sworn, upon his oath says that he and his wife, Francis M. Johnson, are the owners in fee simple of the lands described in the foregoing account and have been such owners since the date of the aforesaid lease, the interest of
109 Francis M. Johnson in said lands being her rights of dower and homestead, and that since the 1st day of January last there has been and still is due them the aforesaid sum of one hundred and twenty dollars ($120.00) (as advance royalty on said lease) from said coal & coke company after allowing all just credits, demands, and set-offs.

This the 15th day of July, A. D. 1885.

his
GEORGE T. x JOHNSON.
mark.

STATE OF ILLINOIS, }
Williamson County. }

The *following* affidavit was subscribed and sworn to by George T.

Johnson before me on this 15th day of July, A. D. 1885. Witness my hand and notarial seal.

[SEAL.] R. H. H. HAMPTON,
Notary Public.

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

110 EXHIBIT "K."

EXHIBIT K TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILL., *April* 7, *A. D.* 1885.

The Carbondale Coal & Coke Company to Catharine Waldron and David W. Waldron, Jr., Dr.

1883.		
January 1st.	To advance royalty due on lease or deed of covenant made by and between Catharine Waldron and others, as parties of the first part, and said Carbondale Coal & Coke Company, as party of the second part, dated on the 5th day of April, A. D. 1873, and leasing the west half of the northwest quarter of section three (3) and the northeast quarter of the northeast quarter of section four (4), in township nine (9) south and in range one (1) east of the third principal meridian, containing 105 acres, more or less:	
	For advance royalty due on said lease for A. D. 1882	$105 00
1884.		
January 1st.	To advance royalty due on same lease for A. D. 1883	105 00
1885.		
January 1st.	To advance royalty due on same lease for A. D. 1884	105 00
Feb. 20th.	To interest, at 6 per cent., for 1 year & 50 days on $105, due January 1st, 1883, and withheld by unreasonable and vexatious delay of payment	13 46
Feb. 20th.	To interest, at 6 per cent., for one year & 50 days on $105, due January 1st, 1884, withheld by unreasonable and vexatious delay of payment	7 16
		$335 62

STATE OF ILLINOIS, }
Williamson County. }

Catharine Waldron and David W. Waldron, being first duly
111 sworn, upon their oaths do say that they are owners in fee simple and tenants in common of the real estate *divided* in the above account and have been such owners since prior to the 1st day of

January, A. D. 188–; that the above amount for royalty is just, due, and unpaid after allowing all just credits and set-offs; that the amount of interest is due and unpaid, and they believe the same to be lawful and just.

This 7th day of April, A. D. 1885.

her
CATHARINE x WALDRON.
mark.
his
DAVID W. x WALDRON.
mark.

STATE OF ILLINOIS, }
Williamson Co. }

I, R. H. H. Hampton, a notary public in and for said county and State, do hereby certify that on the 7th day of April, A. D. 1885, that the foregoing affidavit was signed and sworn to by the said Catharine Waldron and David W. Waldron before me, and that I administered to them the oath that the contents of said affidavit are true.

Given under my hand and notarial seal of office on this 7th day of April, A. D. 1885.

[SEAL.] R. H. H. HAMPTON,
Notary Public.

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

112 EXHIBIT "L."

EXHIBIT L TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILL., *Feb.* 20, 1885.

The Carbondale Coal & Coke Company to Tinsley Priddy & Sarah Priddy, his wife, Dr.

1885, January 1st:

To advance royalty due and owing for the year A. D. 188– by deed of covenant (or mining lease) of the lands hereinafter described, made by and between the said Tinsley Priddy and Sarah Priddy, his wife, as parties of the first part, and the said Carbondale Coal & *Coak* Co., as party of the second part, and dated on the 8th day of March, A. D. 1873, leasing to the said party of the second part for mining purposes the northwest quarter of the southwest quarter and the southwest quarter of the southwest quarter and the southwest quarter of the northwest quarter and the west half of the southeast quarter of the southwest quarter of section thirty-four (34), in township eight (8) south and in range one (1) east of the third principal meridian, 140 acres, more or less:

Advance royalty due thereon for A. D. 1884, $140.00.

STATE OF ILLINOIS, }
Williamson Co. }

Sarah Priddy, being first duly sworn, upon her oath says that she and her husband, Tinsley Priddy, were on and before the first day of January, A. D. 1885, and still are the owners in fee simple of the lands described in the foregoing account, the interest
113 of said Sarah Priddy in said lands being her dower and homestead rights therein; that the above amount is just and unpaid, and that the sum of one hundred and forty dollars is due them as advance royalty from the said Carbondale Coal & Coke Company after allowing all just credits, set-offs, and cross demands.

This 13 day of April, A. D. 1885, witness *his* mark.

her
SARAH x PRIDDY.
mark.

R. H. H. HAMPTON.

STATE OF ILLINOIS, }
Williamson Co. }

I, R. H. H. Hampton, a notary public in and for said county and State, hereby certify that the foregoing affidavit was subscribed and sworn to before me by Sarah Priddy on this the 13th day of April, A. D. 1885.

Witness my hand and notarial seal, hereto affixed.

[SEAL.] R. H. H. HAMPTON,
Notary Public.

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

114 EXHIBIT "N."

EXHIBIT N TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILL., *Jan.* 1, 1885.

To John W. Harrison, receiver of the Carbondale Coal & Coke Company.

SIR: There is now due me for rent or lease on southwest quarter of southeast quarter of section 33, township 8 south, of range 1, fourty dollars ($40) for the year 1844, less the amount received at the company's store, at Carterville, Ill., in goods, etc. I hereby demand payment of the amount due me for said rent as aforesaid, and if payment be not made within ten days from the date of this demand I shall claim a forfeiture in accordance with the terms of the lease heretofore given to you by me for minerals underlying said above-described real estate.

Yours truly, JOSEPH WALDRON.

EXHIBIT "M."

EXHIBIT M TO PETITION OF HENDERSON ET AL.

CARTERVILLE, ILL., *Jan.* 1, 1885.

To John W. Harrison, receiver of the Carbondale Coal & Coke Company.

SIR: There is now due me for rent or lease money on east one-half of the southeast quarter of section 33, township 8, range 1 east, eighty dollars for the year 1884. I hereby demand payment
115 of the amount due me and for said rent as aforesaid, and if payment be not made within ten days from the date of this demand I shall claim a forfeiture in accordance with the terms of the lease heretofore given to A. C. Bryden, president of the Carbondale Coal & Coke Company, by me for the minerals underlying said above-described real estate.

Yours truly, WILLIAM HENDERSON.

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

EXHIBIT "O."

EXHIBIT O TO PETITION OF HENDERSON ET AL.

STATE OF ILLINOIS, }
Williamson Co. }

I, William Henderson, being duly sworn, upon oath do say that on the 1st day of January, A. D. 1885, I mailed at the post office in Carterville, in said Williamson Co., two notices, of which the annexed notices are severally true copies; that they were securely enclosed in seperate sealed envelopes and were each directed to Mr. John W. Harrison, receiver of the Carbondale Coal & Coke Company, at St. Louis, Mo.

WILLIAM HENDERSON.

Sworn and subscribed to before me this 1st day of July, 1885.

R. H. H. HAMPTON,

[SEAL.] *Notary Public.*

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

116 EXHIBIT "P."

EXHIBIT P TO PETITION OF HENDERSON ET AL.

CARTERVILLE, WILLIAMSON COUNTY, ILL., *Febr'y* 2, 1885.

To the Carbondale Coal & Coke Co., its successors, assigns, receiver, or other legal representatives:

You and said company, and its receiver through you, are hereby notified that by virtue of a deed of covenant and lease (commonly called a mining lease) made, signed, sealed, and delivered by and

between the undersigned, George T. Johnson and Francis M. Johnson, his wife, as parties of the first part, and the Carbondale Coal & Coke Company, as party of the second part, dated and acknowledged on the 15th day of March, A. D. 1873, on the first day of January, A. D. 1885, there became and was due from the said Carbondale Coal & Coke Company, its successors and assigns, to the said George T. Johnson and Francis M. Johnson, his wife, the sum of one hundred and twenty dollars as advance royalty due on the said lands described in said deed, to wit, the northeast quarter of the southwest quarter and the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter of section thirty-four (34), in township (8) south and in range one (1) east, of the third principal meridian, situated in Williamson county, in the State of Illinois, containing 120 acres more or less; that the said sum
117 of one hundred and twenty dollars is still due and unpaid, and that said George T. Johnson and Francis M. Johnson, his wife, are still the owners of both the life estate and fee simple in said lands (the interest of said Francis M. Johnson in said lands being her dower and homestead rights therein), and are lawfully entitled to demand and to receive the said sum of $120.00 as advance royalty on said lands; that payment of said sum of one hundred and twenty dollars due as aforesaid as advance royalty on said lands is hereby demanded; and you are hereby notified that unless the sum be paid within ten days after you shall have received this demand the unde-signed will declare the rights of the Carbondale Coal & Coke Co., its successors or assigns, under and by virtue of said deed of covenant and lease forfeited and ended, and will thereafter hold exclusive possession of said lands free of and discharged from all and every claim of the Carbondale Coal & Coke Co., its successors, assigns, or other legal representatives.

GEORGE T. JOHNSON,
FRANCIS M. JOHNSON,
By JAMES M. WASHBURN,
Their Attorney.

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

118 EXHIBIT "Q."

EXHIBIT Q TO PETITION OF HENDERSON ET AL.

CARTERVILLE, WILLIAMSON CO., ILL., *Feb.* 2, *A. D.* 1885.

The Carbondale Coal & Coke Company and its successors, assigns, receiver, or other legal representatives:

You are hereby notified that by virtue of a deed of covenant and lease (commonly called a mining lease) made, signed, sealed, and delivered by and between Catharine Waldron, widow of Henry Waldron, deceased; Israel Waldron, and Mary Waldron, and Catharine Waldron as guardian of Jacob, David, Martha, Henry, and Catharine Waldron, children and minor heirs of Henry Waldron,

deceased, as parties of the first part, and the Carbondale Coal & Coke Co., as party of the second part, dated and acknowledged on the 5th day of April, A. D. 1873, and the 1st day of January, A. D. 1883, on the 1st day of January, A. D. 1884, and on the 1st day of January, A. D. 1885, respectively, there became and was due from the said Carbondale Coal & Coke Co., its successors and assigns, the sum of one hundred and five dollars on each of the three last-mentioned dates, or, taken together, the sum of three hundred and fifteen dollars, as advance royalty due on the lands described in said deed, to wit, the west half of the northwest quarter of section three
119 (3) and the northeast quarter of the northeast quarter of section four (4), in township nine (9) south, and in range one (1) east, of the third principal meridian, situated in Williamson county, in the State of Illinois, containing 105 acres, more or less; that on and ever since the said first day of January, A. D. 1883, the undersigned, Catharine Waldron and David W. Waldron, have been and still are the owners of the life estate and fee simple in said lands, and as such owners they are lawfully entitled to demand and receive the said sum of three hundred and fifteen dollars due as aforesaid; that payment of said sum of three hundred and fifteen dollars as advance royalty is hereby demanded; and you are hereby notified that unless the same be paid within ten days after you shall have received this demand the undersigned will declare the rights of said Carbondale Coal & Coke Co., its successors and assigns, in and to said land, under and by virtue of said deed of covenant and lease, forfeited and ended, and that they will thereafter hold exclusive possession of said lands, free of and discharged from all and every claim of the said Carbondale Coal & Coke Co., its successors, assigns, or other legal representatives.

CATHARINE WALDRON,
DAVID W. WALDRON,
By JAMES M. WASHBURN,
Their Attorney.

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

120 EXHIBIT "R."

EXHIBIT R TO PETITION OF HENDERSON ET AL.

CARTERVILLE, WILLIAMSON CO., ILL., *Feb'ry* 2, 1885.

To the Carbondale Coal & Coke Company, its successors, assigns, receiver, and other legal representatives:

You are hereby notified that by virtue of a deed of covenant and lease (commonly called a mining lease) made, signed, sealed, and delivered by and between the undersigned, Tinsley Priddy and Sarah Priddy, his wife, as parties of the first part, and the Carbondale Coal & Coke Company, as party of the second part, dated and acknowledged on the 8th day of March, A. D. 1873, on the first day of January, A. D. 1885, there became and was due from the said Car-

bondale Coal & Coke Company, its successors and assigns, to the said Tinsley Priddy and Sarah Priddy, his wife, the sum of one hundred and forty dollars as advance royalty due on the following-described lands, being the same described in said deed of covenant and lease, to wit, the northwest quarter of the southwest quarter and the southwest quarter of the southwest quarter and the southwest quarter of the northwest quarter and the west half of the southeast quarter of the southwest quarter of section thirty-four (34), in township (8) south, and in range one (1) east, of the third principal meridian, situated in Williamson county, in the State of
121 Illinois, containing 140 acres, more or less; that the said sum of one hundred and forty dollars is still due and unpaid, and the said Tinsley Priddy and Sarah Priddy, his wife, are still the owners of both the life estate and the fee simple in said lands (the interest of said Sarah Priddy in said lands being her dower and homestead rights therein), and are lawfully entitled to demand and receive the said sum of $140 00 as advance royalty on said lands; that payment of one hundred and forty dollars due as advance royalty on said lands is hereby demanded; and you are hereby notified that unless the same be paid within ten days after you shall have received this demand the undersigned will declare the rights of the Carbondale Coal & Coke Co., its successors and assigns, under and by virtue of said deed of covenant and lease, forfeited and ended, and will thereafter hold exclusive possession of said lands free of and discharged from all and every claim of said Carbondale Coal & Coke Company, its successors, assigns, or other legal representatives.

(Signed) TINSLEY PRIDDY,
SARAH PRIDDY,
By JAMES M. WASHBURN,
Their Attorney.

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

122 EXHIBIT "S."

EXHIBIT S TO PETITION OF HENDERSON ET AL.

STATE OF ILLINOIS, }
Williamson Co. }

James M. Washburn, being *just* duly sworn, upon his oath says that on the 2nd day of February, A. D. 1885, he mailed at the post office in Carterville, Williamson county and State of Illinois, three notices, of which those hereto annexed are severally true copies; that they were securely sealed in one envelope and addressed or directed to Mr. John W. Harrison, St. Louis, Mo., and sent as a registered letter; that in a day or two afterward he received from the postmaster at Carterville the return registry receipt, which is also hereto attached.

July 10th, 1885.

JAMES W. WASHBURN.

STATE OF ILLINOIS, }
Williamson Co. }

I hereby certify that the foregoing affidavit was subscribed and sworn to by James W. Washburn before me on this the 10th day of July, A. D. 1885.

Witness my hand and seal of office affixed.

J. C. JACKSON,
[SEAL.] *County Clerk.*

Indorsed: Filed July 17, 1885. J. A. Jones, clerk.

123 EXHIBIT "T."

Registry Return Receipt.

Sent Feb. 2, 1885.

Reg. No. 43, from post office at Carterville, Ill.

Reg. letter addressed to John W. Harrison, St. Louis, Mo.

After obtaining receipt below the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above-described registered letter.

(Sender's name on the other side.) Sign on the dotted lines to the right. When delivery is made to other than addressee the name of both addressee and recipient must appear. } John W. Harrison, ---------- per C. M. Pierce. ----------

When the registered letter or parcel accompanying this card is delivered the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to address below.

A penalty of $300 is fixed by law for using this card for other than official business.

Post Office Department. Stamp here name of post
Official business. Post office at St. Louis, Mo.
Return to —. office and date of delivery.
Name of sender, J. M. Washburn.
Street and number or post-office box —.
Post office at Carterville, county of Williamson, State of Ill.

(Indorsed:) Filed July 17, 1885. J. A. Jones, clerk.

124 And afterwards, to wit, on the 6th day of August, A. D. 1885, came the receiver of said Carbondale Coal and Coke Company, by William J. Allen, his solicitor, and filed in the office of the clerk of said court in said cause his answer to the petition of William Henderson *et al.*; which said answer is in the words and figures as follows, to wit:

Answer of Receiver to Petition of Wm. Henderson et al.

United States Circuit Court, Southern District of Illinois. June Term, A. D. 1885.

SAMUEL M. DODD *et al.*, Complainants,
vs.
CARBONDALE COAL AND COKE COMPANY, Defendants.

In the matter of the intervening petitions of C. and M. Waldron, George T. Johnson and Frances, his wife; William Henderson, Joseph Waldron, and others.

The answer of John W. Harrison, receiver of the Carbondale Coal and Coke Company, to the intervening petition of the above-named parties.

This respondent, for answer to said petition or to so much and such parts thereof as he deems it advisable to make answer unto, answering, says—

That the Carbondale Coal and Coke Company at various times accepted leases from various parties for coal under various tracts of land in Williamson county, Illinois, in the neighborhood of Carterville, and at different times paid large sums of money, amounting in the aggregate to about $12,016.24, to different persons claiming ownership, title, or possession of said leased premises; that by death, alienation, mortgage, and otherwise, to respondent not fully known, — portions or all of said lands so leased to said coal and coke company the title thereto has become so obscure that respondent has been and is in doubt as to the lawful holders of said respective leases and may not, as he is advised, without risk, pay any sum or sums so claimed to be due upon the said several leases until the respective rights of all parties in anywise connected therewith shall have been passed upon by this honorable court.

And respondent further represents that by the payment upon the part of the said Carbondale Coal and Coke Company to the alleged lessors, to wit, William Henderson, Nancy Priddy, George T. Johnson, Catherine Waldron, for herself and sundry unknown heirs; Joseph Waldron, Sarah Priddy, and all the heirs of Tinsley Priddy, whether minors or otherwise; W. E. Sizemore, Parham Carter, Elijah Peterson, George McNeal, Henry Phillips, H. W. Walker, the heirs of Wm. Tally, and others, at various times and in various amounts as aforesaid for a long series of years, without ever having mined a pound of coal under any of said leases or upon any of the premises claimed by any of the said intervening petitioners, said corporation acquired valuable equitable interests in said premises, the aggregate of the payments in many instances exceeding in amount the value of the entire fee of the tract, including surface as well as coal privileges.

And respondent further states that while said Carbondale Coal and

Coke Company has never enjoyed any advantage as yet under any or either of said leases mentioned in said intervening petition
126 and has never interfered, directly or indirectly, with the premises in said intervening petition described and has contented itself in the past ten years with simply paying to those claiming to rightfully hold the same the leasehold rate of one dollar per acre per annum, yet said leasehold rights so acquired and which have been maintained at such heavy expense may and probably will in the near future be absolutely necessary to said Carbondale Coal and Coke Company and really add very largely to its value. Were all of said leases to-day declared by your honor forfeited and all rights of the Carbondale Coal and Coke Company thereunder destroyed said corporation would receive a very severe blow thereby and its stock be rendered well nigh worthless. Should such coal privileges as are described in said several leases fall into the hands or be secured by a hostile or rival coal company the Carbondale Coal and Coke Company would be most seriously embarrassed and its property rendered almost valueless. This view of the condition of matters brought up by said intervening petition your respondent has reached after anxious investigation since the filing of said intervening petition and deems it his duty to emphasize the fact in bringing it to the court's knowledge that the property placed in his possession by the court will be almost destroyed in value should said leases be declared forfeited and all rights intended to be secured to the Carbondale Coal and Coke Company by its several leasehold contracts and large annual payments thereunder destroyed.

And respondent further states that he at no time heretofore has had any order from this honorable court to pay said lessors
127 or any or either of them or any one claiming to hold under either of said leases any sum or sums of money as rental, and that no application for any such order, so far as he knows or has ever been informed, has been made to this court nor had he any power or authority without such order of court, as he is advised by his counsel, to make any such payment."

And respondent further states, upon information and belief, that by long-established custom the payment required to be made on the date named in said leases has been charged generally to the latter part of December, and that the lessors have been in the habit of waiving the exacting condition of forfeiture and accepting the leasehold rates in December aforesaid, and in many instances, when the same were not paid in December, of bringing suits before justices of the peace against said Carbondale Coal and Coke Company and collecting the *same* due.

And respondent further states that notwithstanding there were frequent defaults upon the part of said Carbondale Coal and Coke Company to pay the annual rent on said leases at the date respectively fixed therein, yet no effort on the part of any of said lessors or persons claiming under them was ever made, so far as respondent has been informed, to have said leases or any of them declared forfeited until said property passed into the hands of respondent by order of court.

And respondent further states that on the 16th day of October, A. D. 1884, this honorable court ordered that your receiver issue $25,000.00 of receiver's certificates, to be known as "firsts," and later, to wit, on the 18th of November, 1884, $9,610.95, to be known
128 as "seconds," and later, to wit, on the 10th day of January, A. D. 1885, the sum of $12,175.82, to be known as "thirds," and finally, to wit, on the 13th of May, 1885, your honor authorized the issuance of $25,000.00 of receiver's certificates to provide for the payment of said certificates known as "firsts," and that each and every one of said orders was made before the filing of said petition; that by the terms of said order of October 16th, 1884, said certificates denominated "firsts" are made a paramount lien and charge against the property, income, and estate of the Carbondale Coal and Coke Company in the hands of said receiver, and that said leased lands were then in the possession, custody, charge, and control of your receiver, and that various parties were induced, by reason of the valuable franchises, rights, and privileges in said leases, as well as by reason of the already accrued and still accruing equities to said Carbondale Coal and Coke Company by its payment of the large sums of money on said leases aforesaid, to wit, $12,016.24, to become purchasers of said receiver's certificates denominated "firsts," and that like considerations operated in inducing the purchase of each of the other series of certificates now held by various parties.

And respondent begs leave to further state that prior to the first day of January, A. D. 1884, the Carbondale Coal and Coke Company issued its first-mortgage bonds for the sum of $50,000.00, conveying as security therefor by mortgage deed to Wm. E. Burr, as trustee, all and singular its property in Williamson county, Illinois, including its leases of the coal under the land of intervening petitioners, and that various persons were induced by reason of
129 the valuable franchises granted by petitioners and others to become purchasers for value of said bonds; and respondent suggests, in order that no injustice be done to the holders of said bonds, that they have an opportunity to protect themselves by the payment of any rents or royalties which of right ought to be paid to intervening petitioners, and, to this end, that the said William E. Burr is a proper party to said intervening petition; that he should have notice in order to elect whether to advance any money due intervening petitioners or obtain an order upon your receiver for its payment.

And your receiver further answers and states that in view of the obscurity and doubt as to the respective rights of the intervening petitioners under said respective leases and of what sum or sums may have been paid by the said Carbondale Coal and Coke Company on said several leases and of the equitable and legal rights of said corporation in the premises the said intervening petition and all matters involved therein be referred to one of the masters of this court, with direction that he hear evidence and find and report upon the question of the rights of said several intervening petitions under said leases, the character of title held by them respectively; the amount due, if any, from said Carbondale Coal and Coke Company;

the extent to which said several lessors or those under whom they may severally claim have waived, and by what means, the right of strict forfeiture; whether said sums so found to be due, if any, shall be paid by your receiver or by said trustee, and, if at all, when.

And your respondent, further answering, says that there is no reason which he has been able to ascertain in justice, equity, or
130 right why intervening petitioners or either or any of them should have a declaration or decree of this honorable court of forfeiture against the Carbondale Coal and Coke Company under said leases; that there has been no laches on its part nor injury suffered by petitioners, and respondent has been led to believe that petitioners are not making their present harsh and inequitable demand against said corporation voluntarily, but have been influenced largely thereto by outside, hostile, and would-be competing corporations, desirous of embarrassing the operations of the said Carbondale Coal and Coke Company, of respondent as its receiver, and of destroying the value of its corporate property and franchises, hoping, in the event of said leases being declared forfeited, to secure new leases from petitioners to the same identical privileges and coal advantages now held by said Carbondale Coal and Coke Company under said leases; and, finally, respondent avows his willingness to carry out any order of this honorable court necessary to have maintained in their full force and validity the said several leases in said intervening petition mentioned.

And now, having answered said intervening petition or so much and such parts thereof as he is advised it is material for him to make answer unto, respondent prays to be dismissed with reasonable costs and charges therefor.

JOHN W. HARRISON,
Receiver of Carbondale Coal & Coke Company.

W. J. ALLEN, *Solicitor.*

(Indorsed:) Filed August 6, 1885. J. A. Jones, clerk.

131 And afterwards, to wit, on the second day of September, in the year last aforesaid, came the petitioners, by their solicitors, and filed in the office of the clerk of said court in said cause their exceptions to answer of John W. Harrison, receiver; which said exceptions are in the words and figures as follows, to wit:

Exceptions to Answer of Receiver to Petition of William Henderson et al.

United States Circuit Court, Southern District of Illinois. June Term, 1885.

SAMUEL M. DODD
vs.
CARBONDALE COAL & COKE COMPANY.

In the matter of the intervening petition of C. and M. Waldron, George I. Johnson and Frances, his wife; William Henderson, Joseph Waldron, *et al.*

Exceptions taken by the said intervenors to the answer of John W. Harrison, receiver of the Carbondale Coal & Coke Company, to said petition.

First. For that said receiver does not set forth that by death, alienation, mortgage, or otherwise the title has become obscure as to any of the leaseholds mentioned in the said intervening petitions.

Second. For that it constitutes no good reason in law or equity why the prayer of the intervenors should not be granted if it be true that the Carbondale Coal & Coke Company has "in many instances made payments exceeding in amount the entire fee of the tract, including surface as well as coal privilege;" or if it be
132 true that said Carbondale Coal & Coke Company "has never enjoyed any advantage as yet under any or either of said leases mentioned in said intervening petition;" or if it be true "that said leasehold rights may and probably will, in the near future, be absolutely necessary to said Carbondale Coal & Coke Company and really add very largely to its value;" or if it be true "that the forfeiture of said leases would result in a very serious blow to said corporation and render its stock well nigh worthless and render its property well nigh valueless;" or if it be true "that the property placed in the hands of said receiver would almost be destroyed in value should said leases be declared forfeited;" or if it be true "that no order of this court has been made for the payment of the rentals called for by said leases;" or if it be true "that said Carbondale Coal and Coke Company has heretofore been in default regarding payments of said rentals and suits have been brought therefor;" or if it be true that prior to the utter bankruptcy of said Carbondale Coal & Coke Company intervenors indulged said corporation regarding rental payments.

Third. For that it constitutes no good reason in law or equity why the prayer of the intervenors should not be granted if it be true that parties were induced to purchase receiver's certificates by reason of the said leasehold interests. On the other hand, if it is true—if such is the fact—said receiver should have protected said leaseholds from forfeiture by prompt payment of said rentals.

Fourth. For that it constitutes no good reason in law or in equity

why the prayer of the intervenors should not be granted if it
133 be true that said leases constituted part of the security of said first mortgage of said Carbondale Coal and Coke Company, and that the purchasers of the bonds secured by said mortgage were induced by such leases to purchase the same; or if it be true that intervenors are not making their present demand "voluntarily, but have been influenced largely thereto by outside, hostile, and would-be competing corporations and combinations."

In all of which particulars the said intervenors except to the answer of said receiver as evasive, imperfect, and insufficient, and humbly pray that said receiver may be compelled to put in a full and sufficient answer to their said petition.

W. W. BARR AND
J. M. WASHBURNE,
Attorneys for Petitioners.

(Endorsed:) Filed September 2nd, 1885. J. A. Jones, clerk.

134 And afterwards, to wit, on Tuesday, the fifteenth day of September, at the June term of said court and year last aforesaid, the following proceedings were had in said court on the intervening petition of William Henderson and others and entered of record in the words and figures —, to wit:

Decree. Entered September 15, 1885.

SAMUEL M. DODD, JAMES G. BROWN, SYLVESTER H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, and Andrew C. Bryden	
vs.	In Equity.
THE CARBONDALE COAL AND COKE COMPANY, JAMES C. Bryden, Margaret Bryden, Administratrix of the Estate of William Bryden, Deceased, and Charles Miller and William E. Burr, Trustees.	

On the joint intervening petition filed July 17th, 1885, of William Henderson, Joseph Waldron, George T. Johnson, Catherine Waldron, Daniel Waldron, Jr., Henry Waldron, and Catherine Waldron, Jr., the last named being a minor, by Catherine Waldron,
135 her guardian, and Sarah Priddy, widow and administratrix of Tinsley Priddy, deceased; Pettus Priddy, Burke Priddy, Elizabeth Ennis, formerly Elizabeth Priddy; Amanda Griffith, formerly Amanda Priddy; Mary Walker, formerly Mary Priddy; Catherine McCree, formerly Catherine Priddy; Abraham Priddy and Ida Priddy, the two last named being minors, without guardians, by Sarah Priddy, their mother and next friend, children and heirs-at-law of Tinsley Priddy, deceased.

And now, on this 15th day of September, 1885, come the parties to the intervening petition, by their counsel, and also the parties to the principal case and the receiver, by their counsel, and submit to the court the questions arising on said intervening petition, on the

petition, and the accompanying exhibits and the answer of the petitioner- thereto.

And the court, having heard and considered the same as well as the arguments of counsel thereon, and being sufficiently advised in the premises, doth order and decree that the prayer of the petitioners be granted, and that the leases in question, which are set forth at large in the petition, are hereby declared forfeited and null and void.

136 Then, afterwards, to wit, on the twenty-third day of September, in the year last aforesaid, came the Carbondale Coal and Coke Company, by its solicitor, William J. Allen, Esq., and filed in the office of the clerk of said court in said cause a motion for the modification of the decree rendered on said intervening petition.

Which said motion is in the words and figures as follows, to wit:

Motion of Carbondale Coal & Coke Company to Modify Decree.

United States Circuit Court, Southern District of Illinois.

In the Matter of the Intervening Petition of WM. HENDERSON, JOSEPH WALDRON, *et al.*
vs.
CARBONDALE COAL & COKE CO.

And now comes the said Carbondale Coal & Coke Company, by Wm. J. Allen, its attorney, and moves the court to modify the decree lately rendered herein and offers to specify in writing or advance orally the reasons why said decree should be so modified,
137 avowing in this motion, as in the answer to said intervening petition, the willingness and readiness of said defendant, Carbondale Coal & Coke Company, to pay any indebtedness due said intervening petitioner- when such sum shall be so found due them, &c.

WILLIAM J. ALLEN,
Att'y for Carbondale Coal & Coke Company.

(Indorsed:) Filed September 23, 1885. J. A. Jones, clerk.

Now, afterwards, to wit, on the twenty-fifth day of September, in year last aforesaid, came the receiver of the Carbondale Coal and Coke Company, by William J. Allen, Esq., his solicitor, and filed in the office of the clerk of said court in said cause a petition for a rehearing in the matter of the intervening petition of William Henderson and others; which said petition is in the words and figures as follows, to wit:

138 *Petition of Receiver for a Rehearing.*

SAMUEL M. DODD *et al.*
vs.
THE CARBONDALE COAL AND COKE CO. *et al.*

Joint Intervening Petition of WILLIAM HENDERSON *et al.*
vs.
JOHN W. HARRISON, Receiver, &c., *et al.*

To the hon. the judges of the circuit court of the U. S. for southern district of Ill.:

Your petitioner, John W. Harrison, receiver of the Carbondale Coal and Coke Co., respectively represents that on the 15th day of September inst. a decree was passed in the foregoing case, in accordance with the prayer of the petitioner, declaring the leases set forth at large in said petition forfeited and null and void.

Your receiver respectfully states that said decree was a great surprise to him and will have a most depressing and serious effect upon the property of the Carbondale Coal & Coke Co., rendering its bonds and stock almost valueless. Your receiver did not sup-
139 pose he was in default in the payment of rent under said leases. He did not in fact know who were the parties really in interest, nor did he suppose he had the right without the order of this court to pay out money to persons claiming money due them.

Receiver further states that said leases covered coal lands and mines c—— and of great value to said corporation; that he was making preparation to sink a shaft and open up said coal mines mentioned in said intervening petition and is now, with*th* the authority for that purpose from this court, which he hopes to obtain, about ready to commence work on opening said new shaft and expect to mine large quantities of coal therefrom.

Receiver states that said decree was passed without notice to the trustees for the bondholders, who desire to answer the intervening petition and show cause why it should not be granted. In view of the great importance of the decree and the serious effect it will have upon the property in receiver's hands and the almost certain destruction of said interests, receiver prays for a rehearing of the matter covered by said decree, and that he be again heard as well as the trustees aforesaid; and will ever pray, &c.

JOHN W. HARRISON, *Receiver*,
By WM. J. ALLEN, *His Sol.*

(Indorsed:) Filed September 25, 1885. J. A. Jones, clerk.

140 And afterwards, to wit, on Friday, the twenty-fifth day of September, at the June term of said court and year last aforesaid, the following further proceedings were had in said court on said intervening petition of William Henderson *et al.* in said cause and entered of record, to wit:

Order Allowing a Rehearing on Petition of Henderson et al.

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL & COKE COMPANY *et al.* } In Chancery.

And now, on this twenty-fifth day of September, 1885, comes the receiver in this cause and presents his petition praying for a rehearing on the intervening petition of William Henderson and others, on which a decree was entered on the 15th instant; and the court, on consideration, doth order and decree that a rehearing be granted, the same to be heard by a full bench.

Then, afterwards, to wit, on the twentieth day of October,
141 in the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Leave to Wm. E. Burr to File X Bill.

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL AND COKE COMPANY *et al.* } In Chancery.

On motion of William E. Burr, by Messrs. James and Charles S. Taussig, his solicitors, leave is granted him to file a cross-bill herein making John W. Harrison, the receiver in this cause, defendant thereto.

And afterwards, to wit, on said twentieth day of October, in the year last aforesaid, came William E. Burr, by Messrs. James and Charles S. Taussig, his solicitors, and filed in the clerk's office of said court his cross-bill in said original cause; which said cross-bill is in the words and figures following, to wit:

142 *Cross-Bill of Wm. E. Burr.*

In the Circuit Court of the United States for the Southern District of Illinois.

Cross-bill.

To the honorable the judges of the circuit court of the United States for said district:

William E. Burr, residing in the city of St. Louis, in the State of Missouri, and a citizen of said city and State, brings this his bill against the Carbondale Coal and Coke Company, a corporation organized and existing under the laws of the State of Illinois and having its chief office and place of business in the city of Carbondale, county of Jackson and State of Illinois; against James C. Bryden and Margaret Bryden, administratrix of the estate of William Bryden, deceased, residents and citizens of the State of Illinois, and

against Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, Andrew C. Bryden, and John W. Harrison, residing in the city of St. Louis, in the State of Missouri, and citizens of said State.

And your orator complains and says that the said Carbondale Coal and Coke Company is a coal-mining, coke-producing, and business corporation organized and existing under and pursuant
143 to the laws of Illinois; that said corporation was organized as a mining corporation, with the power to lease coal lands, to mine and sell coal, to manufacture and sell coke, and to purchase lands for mineral purposes; that in pursuance of such authority said corporation had from time to time acquired real estate, leasehold estates, and other property in the State of Illinois, and has erected thereon improvements appropriate for conducting the business which it was authorized to transact.

Your orator further shows that the said Carbondale Coal and Coke Company, being thereunto duly authorized and empowered, did, on or about the fifth day of April, 1878, sign, seal, execute, acknowledge, and deliver its certain indenture or trust deed (a copy of which is hereto annexed, marked Exhibit A, and is prayed to be taken as part hereof) unto your orator, William E. Burr, as trustee, for the uses and purposes in said conveyance at large set forth, conveying and transferring unto your orator the following-described real estate and leasehold estates, to wit:

First group of lands.—The following tracts of land, situated in Williamson county, State of Illinois, viz:

First. The northwest quarter of the northwest quarter of section eleven, township nine south, range one east, of the third principal meridian, and also one square acre out of the southeast corner of the southwest quarter of the southwest quarter of section two of said township and range, being one square acre in the said corner of said quarter section conveyed to said company by deed of Chap-
144 man and others, dated twenty-ninth day of October, A. D. 1872, and recorded in the recorder's office of said Williamson county in Book Z, page 552, said tract containing forty-one acres; also

Second. A certain tract of land in the town of Carterville, in said county, thus described, to wit: Commencing fifty feet south of the southeast corner of block number eleven of said town, running thence west one hundred feet, thence north to the place of beginning, being the same property conveyed to said company by Chapman and wife by deed dated January 1st, A. D. 1873, and recorded in said recorder's office in Book Number 5, page 269.

Third. The southwest quarter of the northwest quarter and the south half of the northwest quarter of section two, in township nine south, of range one east, of the third principal meridian, containing one hundred and twenty acres, more or less, and being the same land conveyed to said company by the Grand Tower Mining, Manufacturing and Transportation Company by deed dated March eighth, A. D. 1873, and recorded in said recorder's office in Book Number 1, page 357.

Fourth. A parcel of land in the county of Williamson, State of Illinois, described thus: Beginning at the southwest corner of the east half of the northwest quarter of the southwest quarter of section two (the same being now owned by Laban Carter), thence west on a parallel line with the section line to the centre of the railroad switch; thence northeasterly along said railroad switch to the west line of Laban Carter's land, as herein described; thence south
145 along said line to the place of beginning, containing one-half acre, more or less, and being a part of the west half of the northwest quarter of the southwest quarter of section two (2), township nine (9) south, range one (1) east, of the third principal meridian, excepting and reserving therefrom all the coal underlying said piece of land, the same having been already conveyed by lease to the Carbondale Coal and Coke Company, and being the same land conveyed to said company by Mary Onley by deed dated 28th day of April, A. D. 1877, and recorded in said recorder's office in Book 8, page 383; and for the same consideration hereinbefore recited said Carbondale Coal and Coke Company by these presents further bargains and sells, conveys and confirms, to said William E. Burr the following-described property, to wit:

Second group of lands.—All the following-named leaseholds and mining rights and exclusive privileges in and to lands in the said county of Williamson, State of Illinois, namely:

First. A lease of coal and mining rights in and to the west half of the northwest quarter of section two and the northeast quarter of southeast quarter of section three, in township nine south, range one east, of the third principal meridian, containing fifty-three acres, said lease being made by Mary Onley and Martha Onley to said company, dated March twenty-first, A. D. 1871, and recorded in said recorder's office in Book 7, page 204.

Second. A lease of coal and mining rights in and to the southeast quarter of the northwest quarter of section three, township nine south, of range one east, of the third principal meridian, containing
146 thirty-five acres, said lease being made by Joseph T. Williams and wife to said company, dated March eighteenth, A. D. 1871, and recorded in said recorder's office in Book One (1), page 320.

Third. A lease of coal and mining rights in and to the southeast quarter of the southeast quarter of section three, township nine south, of range one east, of the third principal meridian, containing forty acres, said lease being made by George M. McNeill and wife to said company, dated March twenty-first, A. D. 1871, and recorded in said recorder's office in Book One (1), page 333.

Fourth. A lease of coal and mining rights in and to the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of section two, township nine south, of range one east, of the third principal meridian, containing seventy acres, more or less, said lease being made by Elizah Peterson and wife to said company, dated March 18th, A. D. 1871, and recorded in said recorder's office in Book 7, page 63.

Fifth. A lease of coal and mining rights in and to the west half of the northwest quarter of section three and the northeast quarter

of northeast quarter of section four, township nine south, of range one east, of the third principal meridian, containing one hundred and five acres, more or less, said lease being made by Catharine Waldron and others to said company, dated March eighteenth, A. D. 1871, and recorded in said recorder's office in Book One (1), page 325.

Sixth. A lease of coal and mining rights in and to the northeast quarter of the southwest quarter and southeast quarter
147 of the northwest quarter and the northwest quarter of the southeast quarter of section thirty-four, township eight south, of range one east, of the third principal meridian, containing 120 acres, more or less, said lease being made by George I. Johnson and wife to said company, dated March 28th, A. D. 1871, and recorded in said recorder's office in Book 1, page 317.

Seventh. A lease of coal and mining rights in and to the east half of the southwest quarter of the southwest quarter of section two, township nine south, of range one east, of the third principal meridian, containing 19 acres, more or less, said lease being made by Andrew Jackson and wife to said company, dated March 25, A. D. 1871, and recorded in said recorder's office in Book 1, page 339.

Eighth. A lease of coal and mining rights in and to the southwest quarter of the southeast quarter of section thirty-three, township 8 south, of range — east, of the third principal meridian, containing 40 acres, more or less, said lease being made by Joseph Waldron and wife to said company, dated March 25, A. D. 1871, and recorded in said recorder's office in Book 1, page 331.

Ninth. A lease of coal and mining rights — to the southwest quarter of the southeast quarter and the east half of the southeast quarter of the southwest quarter of section 34, township 8 south, of range one east, of the third principal meridian, containing sixty acres, more or less, said lease being made by Parham Carter and wife to said company, dated March 18, A. D. 1871, and recorded in said recorder's office in Book 1, page 276.

Tenth. A lease of coal and mining rights in and to the
148 northwest quarter of the southwest quarter and the southwest quarter of the southwest quarter and the southwest quarter of the northwest quarter and the west half of the southeast quarter of the southwest quarter of section thirty-four, township eight south, of range one east, of the third principal meridian, containing one hundred and forty acres, more or less, said lease being made by Finsley Priddy and wife to said company, dated March 18, A. D. 1871, and recorded in said recorder's office in Book 1, page 310.

Eleventh. A lease of coal and mining rights in and to the east half of the southwest quarter and the east half of the northwest quarter of the southwest quarter and the west half of the southwest quarter of the southwest quarter of section two, township nine south, of range one east, of the third principal meridian, containing 120 acres, more or less, said lease being made by Laban Carter and wife to said company, dated March 18, A. D. 1871, and recorded in said recorder's office in Book 1, page 350.

Twelfth. A lease of coal and mining rights in and to the east half of the southeast quarter of section 33, township 8 south, of range 1 east, of the third principal meridian, containing 80 acres, more or less, said lease being made by Nancy Priddy to said company, dated March 18, A. D. 1871, and recorded in said recorder's office in Book 1, page 328.

Thirteenth. A lease of coal and mining rights in and to the southwest quarter of the northeast quarter and the northeast
149 quarter of the southwest quarter and the northwest quarter of the southeast quarter of section 33, township 8 south, of range one east, of the third principal meridian, containing 120 acres, said lease being made by William Tally and wife to said company, dated March 26, A. D. 1871, and recorded in said recorder's office in Book 1, page 344.

Fourteenth. A lease of coal and mining rights in and to the north half of the northeast quarter of section three and the northwest quarter of the northwest quarter of section two, township nine south, and the southeast quarter of the southeast quarter of section thirty-four and a part of the southwest quarter of the southwest quarter of section thirty-five, township eight south, all of range one east, of the third principal meridian, containing one hundred and fifty-seven acres, more or less, said lease being made by William E. Sizemore and wife to said company, dated March 20th, A. D. 1871, and recorded in said recorder's office in Book 1, page 336; and, furthermore, said Carbondale Coal and Coke Company, for the considerations hereinbefore recited, further assigns, transfers, sells, and conveys to said William E. Burr all the mine openings, mining machinery, tracks, switches, dump, and coke ovens of said company now upon the property hereinbefore described; to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining.

Your orator further shows that said conveyance was thus made to your orator in trust, nevertheless, for the persons and corpora-
150 tions and for the benefit, protection, and security of the persons or corporations who should hold certain bonds of said Carbondale Coal and Coke Company executed and about to be sold and disposed of, which bonds are in said deed of trust described as a series of bonds, one hundred in number, of the same tenor, date, and amount, numbered consecutively from one to one hundred, inclusive, all of which were and are dated the first day of February, 1878, and aggregate the sum of fifty thousand dollars, whereby said Carbondale Coal and Coke Company in and on the face of each of said bonds promises to pay, at the Saint Louis National Bank, in the city of St. Louis, to the bearer thereof, the sum of five hundred dollars ten years after the said date thereof, and also at the same place the semi-annual installments of interest thereon (represented by coupons thereto annexed) at the rate of ten per cent. per annum, each of said coupons being for the sum of twenty-five dollars.

Your orator further shows that in said trust deed it was further provided that for the still further securing of said indebtedness said

Carbondale Coal and Coke Company should, for each and
151 every ton of coal mined and extracted by said company from the lands hereinbefore described as the "first group of lands," within thirty days after said coal shall have been so mined and extracted from said lands, deposit with said William E. Burr, trustee, or his successors in this trust the sum of five cents ($\frac{5}{100}$ of one dollar) for each and every ton of said coal, the fund thereby created to be by said trustee or his designated successors carefully accumulated as a "sinking fund" pledged for the full payment of said indebtedness, and to be thereto applied, if necessary, as hereinafter provided.

Your orator further shows that in said trust deed it was further provided that all moneys arising from any sale of town lots, as hereinafter provided for, shall be received and held by the trustee herein and incorporated by him with the said "sinking fund" as a part thereof, and thereafter held by said trustee in the manner above described, pledged for the further security of the indebtedness hereinbefore recited.

Your orator further shows that it is also provided in the said trust deed that if said Carbondale Coal and Coke Company
152 should fail to keep and perform all or any of the covenants in said deed recited, or if any one of said bonds shall not be fully paid on maturity thereof, according to the tenor and promise of the same, or if the semi-annual instalments of interest upon any five of the said bonds shall at any time be due and unpaid, then said deed shall remain in full force and virtue, and your orator or his successor in the trust, if thereto requested by the holder of any one of said bonds, should then have power and be required to sell the property described in said trust deed and any an*y* every part thereof, at public vendue, to the highest bidder, for cash, at the front door of the court-house, at the county-seat of Williamson county, in the State of Illinois, upon first giving thirty days' notice of the time, terms, and place of such sale and of the property to be sold by advertisements published in the manner as particularly prescribed in said deed; that your orator or his successor in the trust should receive the proceeds of such sale, out of which he should, as directed in said deed, pay and discharge—

153 First, the expenses of executing said trust, including compensation to your orator for his services;

Secondly, all unpaid taxes and statutory liens which said company had covenanted in said deed to pay;

Thirdly, the interest accrued on said bonds;

Fourthly, the principal of said bonds, which in the event of any default in the performance of the covenants contained in said deed or in the payment of said indebtedness, whether principal or interest, was thereby to become at once due and payable, whether due on the face of said bonds or not; and,

Lastly, that any balance of said proceeds, if any, should be paid to said Carbondale Coal and Coke Company or its legal representatives.

And it is further provided in said deed that only so long as the covenants contained in said deed are faithfully performed on the

part of said company and said indebtedness was promptly met and discharged by it as the same should accrue the said company might retain the use and occupation of the real estate described in and conveyed by said deed.

154 Your orator further shows that he, as trustee, joining in the execution of said deed, covenanted faithfully to discharge the trust therein created.

Your orator further shows that the bond and coupons so secured by said trust deed were sold and disposed of for value to different persons and corporations, who are now the holders and owners thereof.

Your orator further shows that said trust deed was duly recorded in the office of the recorder of deeds for the county of Williamson, in the State of Illinois, on the 5th day of April, 1878, in volume 9 of Deeds, on pages 1 to 8, and thus and thereby became a lien and charge upon the property of said company described in said deed.

Your orator further shows that on the first day of February, 1885, and on the first day of August, 1885, there became due and payable upon the bonds secured by said mortgage of the Carbondale Coal and Coke Company semi-annual instalments of the interest, evidenced by *by* the coupons attached to the bonds secured by said mortgage, which coupons were due on said last-mentioned

155 days, when default was made in the payment of the whole interest then due on said bonds and of the coupons evidencing such interest, which said Carbondale Coal and Coke Company entirely failed to pay.

Your orator further shows that said Carbondale Coal and Coke Company since the execution and delivery of said trust deed has mined and extracted from the lands conveyed and described in said deed as the "first group of lands" large quantities of coal, amounting in the aggregate to many thousand tons. The quantity so mined and extracted is not known to your orator, but your orator shows that said company has entirely failed to pay to your orator the sum of five cents for each and every ton of said coal so mined and extracted, and has entirely failed to perform its covenant to that effect in said deed contained.

Your orator further shows that he is informed and believes that said Carbondale Coal and Coke Company has been for some time past and is now in default in the payment of the rents reserved and payable by it on the leased lands described in and conveyed

156 by said trust deed, and that the leases under which said lands are held by said company are liable to be forfeited for such non-payment.

Your orator shows that by reason of the matters aforesaid default has been made by the said Carbondale Coal and Coke Company in the performance of the terms and conditions of said mortgage; that the conditions of said mortgage have become and are broken, and said conveyance to your orator as trustee has become and is absolute; that your orator has been requested by a holder and owner of more than five bonds secured by said trust deed to enforce the conditions of said mortgage by sale, as provided in said mortgage, or by foreclosure thereof by suit or suits in equity.

And your orator further shows that in pursuance of such request he had intended, in conformity with the terms of said trust deed, to enter upon and take possession of the premises in said deed described, and to advertise and sell the same as trustee at public vendue, as in said deed provided.

157 But now so it is, may it please your honors, that said defendants, Dodd, Brown, Laflin, Edwin Harrison, Madill, O'Fallon, and Andrew C. Bryden, have filed their bill in this honorable court against said Carbondale Coal and Coke Company against your orator, James C. Bryden, Margaret Bryden, administratrix of the estate of William Bryden, deceased, and against Charles Miller, in which said complainants substantially alleged as follows, to wit: That they are residents of St. Louis, Missouri, and citizens of said State; that said company is a mining company under the laws of Illinois; that on or about January first, 1881, it purchased and consolidated with another mining corporation organized under the laws of Missouri, known as the St. Louis Coal and Coke Company; that the property and interests acquired of said St. Louis Coal and Coke Company were principally in Jackson county, Illinois; that the Carbondale Coal and Coke Company owned large tracts of land and many leasehold stakes underlaid with coal in the vicinity of Carterville, Williamson county, Illinois; that on

158 February first, 1878, said Carbondale Coal and Coke Company issued the bonds and executed the mortgage trust deed to your orator which are fully described in this your orator's bill of complaint; that the capital of said Carbondale Coal and Coke Company was increased from fifty thousand to the sum of one million dollars; that said petitioners are respectively shareholders of said company to the extent enumerated in said bill, and that they hold a large majority of said stock; that said St. Louis Coal and Coke Company, on February 2nd, 1880, made and delivered its mortgage deed of trust to said Charles Miller, as trustee, to secure the payment of principal and interest of seventy-five bonds of one thousand dollars each, due and payable on February 2nd, 1890, with semi-annual interest coupons; that said bonds, coupons, and mortgage were issued and executed according to law and now constitute a debt of the Carbondale Coal and Coke Company; that by the terms of said two mortgages to your orator and to said Charles Miller, said trustees, in case of default of payment of principal or interest, or in case of non-compliance with other undertakings in said trust deeds, had and have the right of entry into and upon the mortgaged property, to take possession thereof and to expose the same to sale; that said Carbondale Coal and Coke Company has made valuable and costly improvements on its property, which is valuable, and that from January first, 1882, to June first, 1883, the corporation earned money over and above all expenses and charges; that from the last-mentioned date to the time of the filing of said bill the company has lost money

159 in consequence of the general depression of business; that it is financially embarrassed, though its property is worth at least five hundred thousand dollars; that it has

been unable to pay the charges of the two mortgages described; that interest is past due on the mortgage bonds of the St. Louis Coal and Coke Company, and the Carbondale Coal and Coke Company has failed to pay the five cents per ton mined provided in its mortgage to your orator; that the corporation has not been able to borrow money or to continue business on a scale to make it remunerative; that said corporation has a floating debt of about 175,000 dollars, much of which is matured, and that the credit of the corporation is "well nigh destroyed;" that suits have been brought against said corporation in a few instances and for small sums in the counties of Jackson and Williamson, Illinois, and its property attached; that other creditors threaten to institute suits, and the trustees may take steps to take possession of, sell, and sacrifice said property; that by the cessation of the operation of said company several hundred persons are thrown out of employment as miners, and that the entire property of the corporation, while earning nothing, is being wasted and destroyed and uselessly sacrificed; that said Carbondale Coal and Coke Company in July, 1880, made a valuable pool contract with the St. Louis Coal Railroad Company for 25 years, which it is unable to perform, and may be sued for nonperformance; that by reason of the premises there is great danger of a multiplicity of suits against the Carbondale Coal and Coke Company; that judgments may be obtained against it, executions thereon may be levied on the personal property of said corpo-
160 ration and on the equity of redemption in the real estate conveyed in said two mortgages, and that the same would be sold at a great sacrifice to all parties concerned; that there is imminent danger that the security provided in said mortgages may be diminished and the property wasted and destroyed; that it is manifestly for the interest of the holders of the two series of mortgage bonds, as of the creditors and stockholders of said debtor corporation, that its contracts be carried out and profits realized therefrom that the property may be saved and such multiplicity of suits may be avoided by the appointment of a receiver; that the said petitioning stockholders are also creditors by advancement and loans in a sum exceeding $80,000, and are liable as indorsers in the sum of many thousand dollars; and thereupon said petitioners in said bill prayed that your honors appoint a receiver, with the usual powers of receivers in like cases, of all the property of said Carbondale Coal and Coke Company, and they also prayed for the usual writ of subpœna against the defendants, including your petitioner.

And your orator shows that there was and is no other prayer for relief in the said bill filed by said Samuel M. Dodd and others.

Your orator further shows that such proceedings have been had under said last-mentioned bill that John W. Harrison, one of the defendants herein, has, by the order of this court, been appointed receiver, as prayed in and by said bill, and has qualified as such; that in pursuance of such appointment and order said re-
161 ceiver has taken possession and charge of the property of said Carbondale Coal and Coke Company, including the property covered by and conveyed in the mortgage deed of trust executed by

said Carbondale Coal and Coke Company to your orator, and said receiver has, ever since his appointment, held and is now operating and holding said property in pursuance of and under the order of this court.

Your orator further shows that in pursuance *to* the writ of subpœna served upon your orator in said cause of said Samuel M. Dodd and others against said Carbondale Coal and Coke Company he has appeared in said cause and has answered therein, admitting the execution and validity of the mortgage executed to your orator and denying that said bill discloses any equity in favor of said complainants or any right to the appointment of a receiver or a right to deprive your orator, as trustee, of the possession or control of the property conveyed to him in said mortgage, which allegations your orator avers to be true.

Your orator further shows that by order of your honors said receiver has contracted debts and has issued receiver's certificates, which represent on their face that they constitute liens on the property conveyed to your orator prior in dignity to the lien created by the said mortgage made to your orator in the premises.

Your orator further shows that by reason of the appointment of said John W. Harrison as receiver, and by reason of his possession of the property conveyed to your orator, he has been and is restrained from entering upon, taking possession of, and exposing
162 to public sale the property of said Carbondale Coal and Coke Company in the manner and form as provided in said deed.

Your orator further shows that no proceedings at law have been had nor any suit or action has been commenced by or on behalf of your orator or of any holders of the mortgage bonds or coupons secured by and described in the mortgage made to your orator, so far as he has any knowledge.

Your orator further shows that he is informed and believes and so charges that said Carbondale Coal and Coke Company is largely indebted, practically insolvent, unable to pay its floating debt or interest on its bonded indebtedness; that unless its property shall be operated, managed, or controlled by a receiver duly appointed by this court on behalf of your orator and the said bondholders great loss and a sacrifice of the property pledged to them will accrue to the holders of the bonds secured by the mortgage to your orator.

Wherefore, and inasmuch as your orator is remediless in the premises, according to the strict rules of the common law and can only have relief in a court of equity, where matters of this nature are proderly recognizable and reviewable—

Your orator prays that the said defendants may be required to make answer respectively to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were here expressed and they thereunto particularly interrogated, but not under oath (answers under oath being hereby expressly waived); that said defendant, The Carbondale Coal and Coke Company,
163 be required and ordered in its answer to make disclosure of the number of tons of coal which it has mined and taken out of the property conveyed to your orator; that an account be had

and taken of the bonds and coupons secured by the mortgage to your orator and issued, sold, or pledged; that an account be taken of all the property of said defendant corporation pledged to your orator and of all the liens and incumbrances upon the same or any part thereof; that said Carbondale Coal and Coke Company may be decreed to pay unto your orator, as trustee under the mortgage made to him, the principal and interest past due on the bonds secured by said mortgage, together with the costs, commissions, expenses, and charges in this behalf incurred, and in default of such payment the said defendant corporation and all persons claiming and to claim under it may be forever barred, foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, property, and assets and every part and parcel thereof, and may respectively deliver over to your orator all deeds, demises, and writings relating to and concerning the same; that all and singular the said mortgaged premises and property of said defendant corporation may be sold under the decree of this honorable court, as near as may be, in the manner provided by and in conformity with the conditions of said mortgage to your orator, as far as such conformity may be in accordance with equity and good conscience.

Your orator further prays that your honors may advise, instruct, and direct him as to his duties in the premises, and as to the proper manner of performance of the trusts confided to him in said mortgage.

164 And your orator further prays that if the proceeds of any sale made by order of your honors in this cause should be insufficient to pay and satisfy the amount due on the bonds and coupons secured by the mortgage to your orator hereinbefore described, the said defendant corporation may be adjudged to be liable and may be required to pay to your orator the amount of any deficiency which may remain of the debt contracted by them respectively.

And your orator further prays that any and all orders heretofore made in the cause of said defendants, Samuel M. Dodd and others, against said Carbondale Coal and Coke Company restraining your orator from interfering with the property mortgaged to him by said defendant corporation, and appointing John W. Harrison as receiver of said property, may be set aside and for naught held; that pending this suit your honors may place the mortgaged premises under the control and into the possession of your orator, or that a receiver may be appointed, according to the course and practice of this court, with the usual powers of receivers in like cases, of all and singular the premises mortgaged to your orator, or that John W. Harrison, who now has charge of said property as receiver of this court, may be appointed as receiver on behalf of your orator; that such receiver appointed in pursuance of this prayer may be authorized and directed to manage, preserve, and operate said property during the pendency of this controversy, and that such other orders or directions may be made in respect to said receivership as may be equitable and proper.

That your honors grant unto your orator a writ of in-
165 junction, issued out of and under the seal of this honorable court or issued by your honors according to the form of the statute in such cases made and provided, directing, enjoining, and restraining said defendants and each and every of them from interfering with, transferring, selling, or disposing of any of the property mentioned in or covered by said mortgage or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property covered by or embraced in said mortgage to your orator.

And in order that said defendants, if they can, may show why your orator should not have the relief prayed your orator makes the said Carbondale Coal and Coke Company, James C. Bryden, Margaret Bryden, administratrix of the estate of William Bryden, deceased; Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, Andrew C. Bryden, and John W. Harrison defendants hereto, and prays that your honors may grant unto your orator a writ of subpœna, to be directed to the said defendants, commanding them and each of them, at a time certain and under a penalty therein to — named, to be and appear before your honors in this honorable court, and then and there severally answer all and singular the matters aforesaid (but not under oath), and to stand to, abide, and perform such other and further orders and decrees therein as to your honors shall
166 seem proper, and that your orator may have such further relief and other relief in the premises as the nature of this case may require.

And your orator, as in duty bound, will ever pray, &c.

JAMES AND CHARLES S. TAUSSIG,
Solicitors for Wm. E. Burr.

JAMES TAUSSIG, *Of Counsel.*

STATE OF MISSOURI, }
City of St. Louis. }

William E. Burr, complainant herein, being duly sworn, on his oath says that the matters set forth in the foregoing bill of complaint are true, except such matters as are stated upon information and belief, which matters this affiant believes to be true.

WILLIAM E. BURR.

Sworn to and subscribed before me this 19th day of October, 1885.

In testimony whereof I have hereunto affixed my notarial seal and set my hand the day and year last above written.

[SEAL.] EUGENE KARST,
Notary Public.

(Endorsed:) Filed October 20, 1885. J. A. Jones, clerk.

167 And afterwards, to wit, on the 23rd day of February, A. D. 1886, comes William E. Burr, trustee, by Messrs. James and

Charles S. Taussig and Greene, Burnett & Humphrey, his solicitors and files in the office of the clerk of said court in said cause hi motion for leave to appear and file answer to said intervening peti tion of William Henderson; which said motion is in the following words and figures, to wit:

Motion of Wm. E. Burr, Trustee, for Leave to Appear & Answer.

In the Circuit Court of the United States for the Southern District of Illinois.

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL AND COKE COMPANY.

In the matter of the intervening petition of William Henderson and others.

Now comes William E. Burr, one of the defendants in said cause and complainant in the cross-bill filed in said cause, and prays that he may have leave to appear and answer said intervening
168 petition. For reason of his motion said Burr alleges that as trustee in the mortgage created by said Carbondale Coal and Coke Company on the leasehold estates sought to be forfeited by said intervening petitioners he is vitally interested in this proceeding, of the institution and pendency of which he has received no notice.

WM. E. BURR,
By JAMES AND CHARLES S. TAUSSIG AND GREENE, BURNETT & HUMPHREY,
His Solicitors.

(Endorsed:) Filed February 23, 1886. J. A. Jones, clerk.

Then afterwards, to wit, on the said twenty-third day of February, in the January term of said court, in the year last aforesaid, the following further proceedings were entered in said court in said cause and entered of record, to wit:

Leave to Wm. E. Burr to Appear & Answer, &c.

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL & COKE COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of William Henderson *et al.*

Now comes William E. Burr, one of the defendants in said cause and complainant in the cross-bill filed in said cause, and prays that he may have leave to appear and answer said intervening petition, which said motion is sustained.

169 And afterwards, to wit, on the 23rd day of February, A. D. 1886, comes William E. Burr, trustee in the mortgage made by said Carbondale Coal and Coke Company, by his solicitors, Messrs. James & Charles S. Taussig and Messrs. Greene, Burnett & Humphrey, and files in the office of the clerk of said court in said cause his answer to the intervening petition of said William Henderson and others; which said answer is in the words and figures as follows, to wit:

Answer of Wm. E. Burr to Petition of Henderson et al.

UNITED STATES OF AMERICA:

In the United States Circuit Court for the Southern District of Illinois.

SAMUEL M. DODD and Fthers, Plaintiffs,
against
THE CARBONDALE COAL AND COKE COMPANY, Defendants.

In the matter of the intervening petition of William Henderson and others.

Now comes William E. Burr, trustee in the mortgage made by said Carbondale Coal and Coke Company, a foreclosure of which is sought and prayed for in the cross-bill filed in this cause, and by leave of court files his answer to the intervening petition of said William Henderson and others. For such answer this defendant says he is informed that said Carbondale Coal and Coke Company entered into and accepted the various contracts of leases set forth in the said petition, and in pursuance of the terms of said leases paid the ground rents therein provided to be paid from time to time, amounting in the aggregate to more than $12,000. Such payments were made to different persons claiming ownership of said leased premises whenever and as far as said coal and coke company
170 could ascertain the persons and parties who were entitled to such rents. This defendant is informed and charges that the petitioners herein are not the persons who were at the time of the filing of said petition or at the time of the several demands of rent in said petition set forth the owners of said several tracts of land or entitled to the rents reserved in said several leases set forth and enumerated in said petition.

Further answering, this respondent says he does not know and he has no information sufficient to enable him to form a belief as to whether the several amounts of rent claimed in said intervening petition to be due to the several intervening petitioners at the times stated in said petition were actually due as stated, and therefore leaves said petitioners to make such proof of the allegations to that effect as they may deem proper to produce. But this respondent says that each one of the leases recited in said petition constitutes a separate and distinct contract between the respective lessors and the

said Carbondale Coal and Coke Company; that there is no privity of interest or estate existing between the several lessors in said leases or between their legal representatives; that said several petitioners have no joint cause of action against said Carbondale Coal and Coke Company or against said John W. Harrison, and have no right to join together as petitioners in this proceeding. Further answering the said petition, this respondent says he has not information or knowledge sufficient to enable him to form a belief as to whether the several petitioners made of the said receiver or of the said company the several written demands in said petitions set forth.

171 Your respondent says he is informed and believes that if such demands were made they were not made by the persons who at the time of such demands were entitled to receive the rents reserved in the several leases made to said coal and coke company.

This respondent further avers that at the time of the demands for payment of rent alleged to have been made by said petitioners all the property and estate of said lessee, the Carbondale Coal and Coke Company, was in the custody and under the control of this honorable court, and was then and has ever since been controlled and administered by it through its receiver, the said John W. Harrison, and his successor in said office.

And this respondent is informed and charges that at no time have the petitioners or either of them or the persons truly entitled to receive the rents reserved under said several leases applied to this court for or obtained an order directing said receiver to pay to said petitioners or to the persons entitled to receive the same the rents reserved in said respective leases; and this respondent further says that by reason of such control exercised by this court neither said Carbondale Coal and Coke Company nor this respondent, as trustee, had or have, since the appointment of such receiver, any funds or means in their hands to have enabled them to pay and discharge such rentals. Further answering, this respondent says he is informed that it is not true, as alleged in said petition, that the rights of said coal and coke company, its successors or assigns, to mine in or otherwise hold or enjoy the several tracts of land described in said leases have ever become forfeited and ended, nor is it true that said

172 petitioners or either of them have ever entered into the exclusive possession of said tracts of land or either of them, or that they hold the same or either of them free and discharged of every and all claims of the said coal and coke company or its legal representatives. This respondent is informed and believes and so charges that this court, through its receivers, John W. Harrison and H. A. Blossom, has ever since the appointment of said receivers remained in the possession and control of said leased lands and now holds such possession through its receiver. This respondent further says that if it be true that said petitioners have without leave or decree of this court entered into possession of said lands or any parts thereof they have done so in contempt of this court. This respondent, further answering, says he is informed and believes that by the payment on the part of said Carbondale Coal and Coke Company to the alleged lessors at various times and various amounts said

corporation, the Carbondale Coal and Coke Company, has acquired a valuable equitable interest in said leased premises by reason of the fact that said Carbondale Coal and Coke Company has never diminished the value of said land by taking any coal therefrom, and that the aggregate of the payments made for ground rent in many instances exceed in amount the value of the entire fee of the land leased. This respondent is informed that while said company has not heretofore mined coal on any of said lands, the same are absolutely and indispensably necessary for the preservation and value of the estate in charge of this court, and that the forfeiture of said leases would be destructive of the value of the rest of the property now in the hands of the receiver.

173 This respondent further says he is informed and believes and so charges that it has been heretofore the custom and agreement between said Carbondale Coal and Coke Company and the several owners and lessors of said leasehold estate that said lessors should not insist upon and demand a punctual and prompt payment of said rentals in accordance with the terms of said respective leases, but to accept their rent after the time provided in the leases in instalments, and that they would have done so and would do so at the present time but for the fact that they are instigated to institute these proceedings by parties inimical to and competitors of said Carbondale Coal and Coke Company to enforce the forfeiture claimed in their petition. This respondent, further answering, says that he is informed and believes that the receiver's certificates issued in this cause by order and authority of this court and the bonds secured by the mortgage to this respondent fully set forth in the original petition and cross-bill in this cause would become greatly impaired in value and almost worthless if the forfeiture herein claimed was sustained.

This respondent, further answering, says that no demand to pay such rents was ever made of him; that he was not made a party to this proceeding, and he is informed and so charges that no proper demand for the payment of the rents reserved in said several leases was ever made of said Carbondale Coal and Coke Company.

Wherefore this defendant prays that said intervening petition be dismissed for misjoinder of the several petitioners therein,

174 or that if this court should hold that said several petitioners have properly joined their several causes of action, then said intervening petition be referred to one of the masters of this court with direction to hear evidence, find and report upon the question of the rights of the intervening petitioners to the amounts of rent respectively claimed by them, to ascertain the sums respectively due to each, and to apportion among them the sum of money brought into court or offered to be brought into court by said receiver.

And now, having answered as aforesaid, respondent prays to be dismissed with reasonable costs and charges therefor.

WILLIAM E. BURR, *Trustee,*
By JAMES & CHARLES S. TAUSSIG AND
GREENE, BURNETTE & HUMPHREY,
His Solicitors.

(Endorsed :) Filed February 23, 1886. J. A. Jones, clerk.

Now, afterwards, to wit, on the second day of March, in the year last aforesaid, came William Henderson and others, intervening petitioners herein, by Messrs. Barr and Washburn, their solicitors, and filed an amendment to their intervening petition; which said amendment is as follows, to wit:

175 *Amendment to Petition of Henderson et al.*

Amendment to intervening petition of William Henderson *et al. vs.* Carbondale Coal and Coke Company *et al.*, filed by leave of court 2nd day of March, A. D. 1886.

As matter that has accrued subsequent to the filing of said petition and as amendatory thereof, your petitioners further state that on the 15th day of September, A. D. 1885, the questions arising upon said petition and the answer thereto came on to be heard before this honorable court, when and where it was "ordered and decreed that the prayer of petitioners be granted, and that the leases in question, which are set forth at large in the petition, are hereby declared forfeited and null and void."

That thereupon and before any further proceedings were had in said cause, to wit, on the 17th day of September, A. D. 1885, the petitioner, Joseph Waldron, and Amanda, his wife, being in full possession and holding the following lands free and discharged from the lease to the Carbondale Coal and Coke Company, by deed of lease duly signed, sealed, acknowledged, and delivered by them for a valuable consideration, did lease and to mine let to one E. A.
176 Hitchcock the same southwest quarter of the southeast quarter of section thirty-three (33), in township eight (8) south and in range one (1) east of the third principal meridian, described in said petition as belonging to said Joseph Waldron, which lease was duly recorded in the recorder's office in Williamson county, Illinois, on the 21st day of September, A. D. 1885.

That on the same day and under the same circumstances and conditions the petitioner, William Henderson, and Sarah, his wife, for a like consideration, by deed of lease duly signed, sealed, acknowledged, and delivered, did lease and to mine let to one E. A. Hitchcock the same east half of the southeast quarter of section thirty-three (33), in township eight (8) south and in range one (1) east of the third principal meridian, situated in said Williamson county, being the same described in the intervening petition as belonging to said William Henderson; which said lease was duly recorded in the recorder's office of said Williamson county on the 21st day of Sept., A. D. 1885, in volume 19 of Deeds, on pages 317, 318, 319, and 320.

177 That on the same day and under the same circumstances and conditions the petitioners, Catherine Waldron, Henry Waldron, David Waldron, Jr., and Nevandah Waldron, his wife, for a like consideration, by deed of lease duly signed, sealed, and delivered, did lease

and to mine let to one E. A. Hitchcock the same west half of the northwest quarter of section three (3), township nine (9) south, range one (1) east, in said Williamson county, being the same land described in the petition herein as belonging to said petitioners who executed said last-mentioned lease, which lease was duly recorded in the recorder's office of Williamson county, Illinois, on the 28th day of Sept., A. D. 1885, in Book 19 of Deeds, page 345.

That afterwards, on the 26th day of September, A. D. 1885, one day after the rehearing had been granted herein, but before Catherine Waldron and Henry Waldron or their attorneys had any notice whatever that any application had been made for a rehearing or that the same had been granted or any other steps taken
178 in the case, supposing that the decree herein was in full force, the said Catherine Waldron and Henry Waldron leased and to mine let, on the same terms and conditions, to one E. A. Hitchcock the northeast quarter of the northeast quarter of section four (4) (except fifteen (15) acres of equal width off the west side thereof), in township nine (9) south and in range one (1) east, in Williamson county, Illinois, which lease was duly executed and delivered on said 26th Sept., 1885, and recorded on September 29th, 1885, in the office of recorder of deeds of Williamson county, Illinois, in vol. 19 of Deeds, on page 335; all of which leases said petitioners are ready to produce to the court, copies of which are hereto attached and prayed to be taken as a part of this petition.

BARR & WASHBURN,
For Petitioners, Henderson et al.

(Endorsed:) Filed March 2, 1886. J. A. Jones, clerk.

Afterwards, to wit, on the fourth day of March, in year last aforesaid, answers to amendment to petition of William Henderson and others were filed by W. E. Burr, trustee, and Howard A. Blossom, receiver, as follows, to wit:

179 *Answer to Amendment to Petition by W. E. Burr, Trustee.*

SAMUEL M. DODD and Others
vs.
THE CARBONDALE C. & C. CO.

In the matter of the intervening petition of William Henderson and others.

Now comes William E. Burr, trustee, and, for answer to the amendment made by the petitioners to their petition herein by interlineation and by separate amendment made by leave of court on the 2nd day of March, 1886, says that it is true that said Carbondale C. & C. Co. and your receiver claim to have an interest in the leasehold estates mentioned in plaintiffs' petition and sought to be forfeited. For the reasons stated in his original answer and in this answer this defendant says that the interest and estate of said company and

of their receiver holding said estate for this court remains unimpaired.

For further answer to the separate amendment filed by said petitioners this defendant says he is informed that the said Joseph Waldron, William Henderson, Catherine, Henry, and David Waldron did undertake to execute to one E. A. Hitchcock leases of the tenor mentioned in said amended petition; but this defendant charges that by said leases the said E. A. Hitchcock has acquired no
180 legal or equitable interest in the lands described in said leases, for the reason that said Hitchcock had full notice of the institution and pendency of the proceedings in this cause from their very inception and was a party in interest thereto, although not appearing in the record of said proceedings as a party in interest; that he had full notice of the proceedings which led to the setting aside of the decree made and set aside by this court.

This defendant is informed and believes and so charges that said E. A. Hitchcock did not take said leases for himself, but has sought to obtain them and has obtained them for the Crystal Plate Glass Company, a corporation incorporated under the laws of Missouri, which is the real party in interest in said leases.

This defendant is informed and believes that said corporation has no right under its charter or under the laws of the State of Illinois to receive or hold such leasehold estates or to operate coal mines under the same.

Wherefore this defendant prays that this court may declare and hold the leases to said Hitchcock enumerated in said amended
181 petition to be null and void, to direct the petitioners to produce the same that they may be cancelled, and by its order to restrain the petitioners from interfering in any manner with the possession and enjoyment by said receiver for this court of the premises and of the leasehold estates created by the leases heretofore made by said petitioners to the Carbondale C. & C. Co.

This defendant further says that in pursuance of an order made by this court since the date of said alleged forfeiture of said leases said receiver has endeavored to pay the rents due under said leases, and being in doubt as to the persons entitled to said rents, and believing that many of the petitioners are not entitled to said rents, he has deposited in this court the sum of $1,100.00, being a sum sufficient to satisfy all the rents due under the said leases.

This defendant further says that since the filing of his first answer one of the petitioners, to wit, G. T. Johnson, has accepted from said receiver all the rents due to him under the lease made
182 by him to the Carbondale C. & C. Co., and has consented in writing that any forfeiture heretofore attempted to be declared by him may be treated as set aside and avoided.

WM. E. BURR, *Trustee*,
By JAMES & CHARLES S. TAUSSIG AND
GREENE, BURNETT & HUMPHREY,
His Solicitors.

(Endorsed:) Filed March 4, 1886. J. A. Jones, clerk.

Answer to Amendment to Petition by H. A. Blossom, Receiver.

SAMUEL M. DODD *et al.*
against
THE CARBONDALE COAL *C.* & C. CO.

In the matter of the intervening petition of William Henderson and others.

Now comes Howard A. Blossom, receiver, and, for answer to the amendments made by the petitioners to their petition herein by interlineation and by separate amendment made by leave of court on the 2nd day of March, 1886, says—

That it is true that said Carbondale C. & C. Co. and your
183 receiver claims to have an interest in the leasehold estates mentioned in plaintiffs' petition and sought to be forfeited.

This defendant says that the payment of the rents claimed by the petitioners, if due to them, was never demanded of him according to law, nor was he ever notified according to law of the intention of the lessors named in said leases, or their legal representatives, to forfeit said leases or either of them, nor has this receiver ever ceased to be in and to hold the possession of said premises. For the reasons stated herein and in his original answer your receiver says that the interest and estate of said company and of this receiver holding said estate for this court remains unimpaired.

For further answer to the separate amendment filed by said petitioners this defendant says he is informed that the said Joseph Waldron, William Henderson, Catharine, Henry, and David Waldron did undertake to execute to one E. A. Hitchcock leases of the tenor mentioned in said amended petition; but this defendant says that by said leases the said E. A. Hitchcock has acquired no equitable interest in the lands described in said leases for the reason that said

Hitchcock had full notice of the institution and pendency of
184 the proceedings in this cause from their very inception and was a party in interest thereto, although not appearing in the record of said proceedings as a party in interest; that he had full notice of the proceedings which led to the setting aside of that decree.

This defendant is informed and believes and so charges that said E. A. Hitchcock did not take said leases for himself, but has sought to obtain them and has obtained them for the Crystal Plate Glass Company, a corporation incorporated under the laws of Missouri, which is the real party in interest of said leases.

This defendant is informed and believes that said corporation has no right under its charter or under the laws of the State of Illinois to receive or hold such leasehold estates or to operate coal mines under the same; wherefore this defendant prays that this court may declare and hold the leases to said Hitchcock, enumerated in said amended petition, to be null and void; to direct the petitioners to produce the same, that they may be cancelled, and by its order to restrain the said petitioners from interfering in any manner with

the possession and enjoyment by this defendant of the premises and of the leasehold estates created by the leases heretofore
185 made by said petitioners to the Carbondale Coal and Coke Company.

This defendant further says that in pursuance of an order made by this court since date of alleged forfeiture of said leases he has endeavored to pay the rents due under said leases, and being in doubt as to the persons who are entitled to said rents, and believing that many of the petitioners are not entitled to said rents, he has deposited in this court the sum of $1,100.00, being a sum sufficient to satisfy all the rents due under the said leases.

This defendant further says that since the filing of his first answer one of the petitioners, to wit, G. T. Johnson, has accepted from this defendant all the rents due to him under the lease made by him to the Carbondale C. & C. Co., and has consented in writing that any forfeiture heretofore attempted to be declared by him may be treated as set aside and avoided.

H. A. BLOSSOM,
Rec'r Carbondale Coal & Coke Co.

WILLIAM J. ALLEN, *Solicitor.*

(Endorsed:) Filed March 4, 1886. J. A. Jones, clerk.

186 Now, afterwards, to wit, on the fourth day of March, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Appointing W. P. Lightfoot & L. L. Walbridge Special Examiners.

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL & COKE COMPANY *et al.* } In Chancery.

On intervening petition, as amended, of William Henderson *et al.*

It is hereby ordered that W. P. Lightfoot, U. S. commissioner at Carbondale, Illinois, and L. L. Walbridge, of St. Louis, Mo., be appointed special examiners to hear and report testimony on the above intervening claim.

Then afterwards, to wit, on the seventh day of April, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

187 *Order Limiting Time for Taking Testimony.*

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL AND COKE COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of William Henderson *et al.*

On motion, it is ordered that the said petitioner be allowed twenty days from this date in which to take their testimony-in-chief and no longer, and that said defendants be allowed two weeks thereafter in which to take their testimony and petitioners one week thereafter in which to take rebutting testimony if they so desire.

Afterwards, to wit, on the tenth day of April, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Leave to Wm. E. Burr to File Amendment to His Answer & Making E. A. Hitchcock Defendant.

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL & COKE CO. *et al.* } In Chancery.

In the matter of the intervening petition of William Henderson & others.

188 And now, on this tenth day of April, 1886, come William E. Burr, trustee, and the receiver in the principal cause and by leave of the court file their amended answers to the intervening petition and the amendment thereto, and on their motion it is ordered by the court that E. A. Hitchcock be made a defendant to said intervening petition, and that he be summoned before the court as such defendant and be required to make such answer to said intervening petition as the law and facts demand.

Then, afterwards, to wit, on said tenth day of April, of the year last aforesaid, came again William E. Burr, trustee, by his solicitors, and filed in the clerk's office of said court his amendment to his answer to petition of William Henderson and others in the words and figures following, to wit:

Amendment to Answer of Wm. E. Burr to Petition of Wm. Henderson & Others.

In the Circuit Court of the United States for the Southern District of Illinois.

SAMUEL M. DODD *et al.*
v.
THE CARBONDALE COAL & COKE CO.

189 In the matter of the intervening petition of William Henderson and others.

Now comes the said William E. Burr, trustee, and by leave of court files his amendment to his answers to the petition and amended petition of said William Henderson, to wit: This defendant prays that he may have leave to make said E. A. Hitchcock a party to this cause, and further prays that said E. A. Hitchcock may be summoned by a proper writ of this court to appear and show cause why the said leases alleged to have been made to him by said petitioners or their legal representative should not be produced in this court to be cancelled as prayed.

WM. E. BURR,
By JAMES & CHARLES S. TAUSSIG,
His Solicitors.

(Indorsed:) Filed April 10, 1886. J. A. Jones, clerk.

190 Afterwards, to wit, on the thirteenth day of April, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Extending Time of Petitioners to Take Testimony.

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL & COKE CO. *et al.* } In Chancery.

In the matter of the petition of William Henderson *et al.*

On motion of petitioners, by W. W. Barr, Esq., their solicitor, the order entered herein April 7, 1886, is so amended as to allow petitioners twenty days from April 27, 1886, in which to take their testimony-in-chief.

And afterwards, to wit, on the third day of May, in the term and year last aforesaid, the following further proceedings were had in said court and entered of record, to wit:

Order Appointing Richard H. Hampton in Place of W. P. Lightfoot.

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL & COKE CO. *et al.* } In Chancery.

In matter of petition of William Henderson *et al.*

It appearing that W. P. Lightfoot, U. S. commissioner, has removed from the State of Illinois, it is ordered by the court that Richard H. Hampton be appointed to take and report testimony in his stead in this cause, and that he have thirty days in which to complete the taking on the part of the petitioners.

191 And afterwards, to wit, on the twelfth day of May, in the year aforesaid, came E. A. Hitchcock, Esq., by his solicitors, Messrs. McCartney & Casey, and filed in the office of the clerk of said court in said cause his answer to the intervening petition of Wm. Henderson *et al.*; which said answer is in the words and figures as follows, to wit:

Answer of E. A. Hitchcock to Petition of Wm. Henderson et al.

United States Circuit Court, Southern District of Illinois. January Term, A. D. 1886.

SAMUEL M. DODDS *et al.*
v.
THE CARBONDALE COAL & COKE CO. *et al.* } Chancery.

In the matter of the interpleader of William Henderson *et al.*

Now comes E. A. Hitchcock, by order of the above court made defendant in this cause, and for answer to the allegations made in the interpleader of Wm. Henderson and others and the charges made against him in the answers of his codefendants, for answer thereunto or to so much thereof as he is advised that it is necessary or material for him to make answer unto, says—

That true it is, as he is informed and believes, that Wm. Henderson, one of the petitioners, is the present owner in fee of the E. ½ S. E. qr., sec. 33, T. 8 S., range 1 E., 80 acres, having purchased
192 the same from the owners in fee May 23, 1882; that Joseph Waldron is the owner in fee of the S. W. ¼ S. E. qr., sec. 33, T. 8 S., range 1 E., 40 acres, he having purchased the same from Thomas Waldron, the owner of the fee, March 18, 1873; that Catharine Waldron, Henry Waldron, and David Waldron are the owners in fee as tenants in common of the W. ½ of the N. W. qr., sec. 3, T. 9 S., R. 1 E., and the N. E. ¼ N. E. qr., sec. 4, T. 9 S., R. 1 E., containing in all 105 acres, and that the heirs of Tinsley Priddy are now the owners in fee of the N. W. ¼ S. W. qr., the S. W. ¼ of the S. W. qr., the S. W. ¼ of the N. W. qr., and the W. ½ of the S. E. ¼ of the S. W. qr., all in sec. 34, T. 8 S., R. 1 E. He also admits that he is

informed and believes that each of said above-named persons or their grantors or ancestors leased said lands to the Carbondale Coal & Coke Co. in the year 1873, as is stated in said intervening petition.

Respondent, further answering, says that he is informed and believes that it was a condition of the leases between the said owners in fee of the above-described lands and the lessee, the Carbondale Coal & Coke Co., that said lessee was to mine coal upon said lands and was to pay for all coal so mined the sum of five cents per ton for all coal taken out from any portion of said lands, and until said mining operations were entered upon and coal so taken therefrom the said lessee was to pay an annual rental of one dollar per acre for the land, which rental was to be paid on or before January
193 1st in each year in advance; that he is also informed and believes that there is a vein of coal underlying all of said lands so leased as aforesaid at least nine feet thick and of fine quality, and that if this coal was properly mined it would produce in royalties to the lessors of the lands at five cents per ton upwards of five hundred dollars per acre of land, but while undeveloped and unworked is but of little value to them.

Respondent, further answering, says that he is also informed and believes that it was a condition of the leases executed by the intervening petitioners to respondent's codefendants, The Carbondale Coal & Coke Co., that if the rent of said lands was not paid when due or if at any time the lessee should be in default for the term of ten days after written demand therefor by the party legally entitled to demand and receive the same they, the lessee, should forfeit all right to mine upon or otherwise hold or enjoy the tracts of land above described; and respondent admits that said lessee, the Carbondale Coal & Coke Co., was in default in the payment of the rent due the said above-named lessors, as is stated in the intervening petition in this cause filed, for more than two days after written demand therefore by the owners of the fee in said lands, and that by the terms of the lease aforesaid all the rights and interest of the said Carbondale Coal & Coke Co. in said lands under said leases became forfeited and was thereafter entirely null and void and of no effect.

194 Respondent also admits that on a trial of this cause in the circuit court of the United States for the southern district of Illinois on the 15th day of September, 1885, a decree was entered in and by said court and filed and made a matter of record there-n wherein it was finally determined by said court that the leases given by the said above-named petitioners to the codefendant of respondent, The Carbondale Coal & Coke Co., for the land above described were declared to be forfeited and entirely null and void, which decree was on the 25th day of December thereafter set aside by the said court and a new hearing of the cause granted; but respondent avers the fact to be that having been informed that said decree had been entered as above, holding said leases to be forfeited and entirely null and void, and he having had some negoti-ons with the lessors previous to the entering of said decree that if such a decree should

be entered in said cause that respondent might lease said lands and at once commence mining coal thereon, he did, upon learning that said decree had been entered, lease from Wm. Henderson, Catharine Waldron, and the heirs of Tinsley Priddy the lands owned by them and above described, and now holds said leases and intends to hold and assert the same as valid existing leases of the same obtained by respondent in good faith upon the payment of a valuable consideration after the rights and interests and all claims of the said Carbondale Coal & Coke Co.
195 had by this court been declared, after full and thorough investigation of the law and the facts, to be entirely forfeited and null and void in all the lands leased by petitioners to the said C. C. & C. Co. Respondent, further answering, says that he is not in law or equity required to answer any of the charges or allegations, nor is he subject to any of the relief asked by his codefendants, The Carbondale Coal & Coke Co., nor the receiver thereof nor the trustee of its mortgage bonds in their several answers in this cause filed; that he in law has performed all the duties that can be required of him when he has made full and complete answers to the charges made in a bill or bills in chancery or interpleaders against him, and cannot be held to answer charges made in answer to his codefendants, and upon this he prays the judgment of the court.

Respondent relies upon his leases obtained from the petitioners aforesaid in good faith and for a valuable consideration as complete and perfect bears to any claims or assertions of interest which any of his codefendants may have or may have had in any of the lands included in said leases after the date of said decree; that he has no knowledge whether or not the said C. C. & C. Co. would be injured or not by the forfeiture of its leases, but believes that it still has leases, unforfeited and valid, upon more lands than it can take the coal from in the next fifty years, and that it would be an
196 irreparable injury to the lessors if they should be compelled to wait the slow and uncertain movements of an insolvent corporation that has now a half century's term of performance before it before it can hope to enter upon its leases with the petitioners and carry out its contract to mine coal thereon.

Respondent avers that he is informed and believes that the sole purpose the parties to the leases forfeited by the court had in making said leases was that the said Carbondale Coal & Coke Co. should mine the coal from the lands so leased within a reasonable time, which has now elapsed, and no coal has yet been taken therefrom and most probably would not have been taken therefrom for a long time to come, by reason of which long delay the said lessors would be delayed and hindered in securing any returns from their lands except the small and insignificant rent of one dollar per acre per annum.

Respondent denies that he has leased the said lands for any corporation whatever, but that he has leased the same with the purpose and with the intention of at once opening coal shafts on said lands and to begin without delay to mine coal thereon for the market, and to be op-ned and operated under his control and management.

And the said defendant, having fully answered all and singular the allegations made against him in the petition of the said
197 William Henderson *et al.*, prays to be hence dismissed with his reasonable costs and expenses in this behalf most unjustly expended.

E. A. HITCHCOCK,
Respondent.

McCARTNEY & CASEY, *Solicitors.*

(Endorsed:) Filed May 12, 1886. J. A. Jones, clerk.

Depositions on Behalf of William Henderson and Others, Read in Evidence on the Hearing of said Intervening Petition and Taken by R. H. H. Hampton, Special Commissioner, at Carterville, Williamson County, Illinois.

198 The depositions of Sarah Priddy, Catharine Waldron, Israel Waldron, Joseph Waldron, Robert Winning, William Henderson, David Waldron, Jr., and James M. Washburn, all residents of Williamson county, in the State of Illinois, witnesses of lawful age, produced, sworn, and examined upon their several corporal oaths on the 26th day of May, A. D. 1886, at the office of R. H. Hampton, in the village of Carterville, in Williamson Co., in the State of Illinois, by me, R. H. Hampton, a commissioner duly appointed by the circuit court of the United States for the southern district of Illinois for the purpose of taking testimony for William Henderson and others, intervening petitioners in the suit now pending in said court wherein Samuel M. Dodd *et al.* are the complainants and The Carbondale Coal and Coke Company is the defendant and the said William Henderson and others are intervening petitioners (and also a notary public in and for said Williamson county, in said State of Illinois).

The said Sarah Priddy, Catharine Waldron, Israel Waldron, Joseph Waldron, Robert Winning, William Henderson, David Waldron, Jr., and James M. Washburn, being first sworn by me as witnesses in said cause, previous to the commencement of their
199 several examinations, to testify the truth, as well on the part of said complainants and defendant as on the part of said intervening petitioners, in relation to the matters in controversy in said suit between said intervening petitioners and said complainants and defendant so far as they should severally be thereunto interrogated, testified and deposed as follows:

And the said SARAH PRIDDY, being first examined, testified and deposed as follows:

Deposition of Sarah Priddy.

Interrogatory 1st by counsel for intervening petitioners. Please state your name, age, occupation, and place of residence.

Ans. 1. Sarah Priddy; age, 56 years; house upon a farm about 1¾ miles northwest from Carterville, Williamson county, Ills.

Interrogatory 2nd by same. State whether you are married or single; whether you have been married; and, if so, who was your husband; whether he is living or dead, and, if dead, state when and where he died and whether he left a last will and testament.

Ans. 2. I am single now. I have been married. My husband was Tinsley Priddy; he died April 1, 1885; he died at the place I now reside, in Williamson Co., State of Illinois. He left no will.

200 Interrogatory 3rd by same. State whether any person is administrator or administratrix of his estate; and, if so, who and about when he or she became such.

Ans. 3rd. I am the administratrix of his estate; became such about the middle of April, 1885.

Interrogatory 4th by same. Did Tinsley Priddy leave any children? If so, state the name and age of each.

Ans. 4th. He left ten children, "to wit:" Amanda, now Amanda Griffith, age about 34 years; Elizabeth, now Elizabeth Ennis, age about 32 years; Pettus Priddy, age about 30 years; Mary, now Mary Walker, age about 29 years; Burke Priddy, age about 28 years; Catharine, now Catharine McCree, age about 22 y'rs; Abe Priddy, age about 21 years; Angaline, now Angaline Jerrolds, age about 20 years; William Priddy, age about 16 years; Ida Priddy, age about 13 years.

Interrogatory 5th by same. State if he left any other child than those you have named, and whether he left any descendant of a deceased child.

Ans. 5th. None, nor any descendant of a deceased child.

Interrogatory 6th by same. You may state whether Tinsley Priddy in his lifetime and yourself leased any lands for mining purposes to the Carbondale Coal & Coke Co.; if so, state about when and how many acres, and, if you can, give the description, and state whether Tinsley Priddy owned and resided on these lands till his death, and whether you have resided on them ever since his death.

201

Ans. 6th. Yes; about 140 acres of land, leased about the 8th day of March, 1873, described as follows: The N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ and the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 34, township 8 south, range 1 E., of the 3rd principal meridian. Yes, he owned and resided on the lands until his death. I still reside on the same land.

Interrogatory 7th by same. Please state whether either your dower or homestead in these lands has been assigned or set apart to you, or whether these lands or any part of them have been divided or partitioned among the children of Tinsley Priddy, deceased.

Ans. 7th. Neither dower or homestead has been set aside to me, nor has any part of the lands been divided among the children.

Interrogatory 8th by same. State whether at the time said Tinsley Priddy died the Carbondale Coal & Coke Company was indebted to him for advance rent or royalty due on said lease of these lands; and, if so, how much.

202

Ans. 8th. At the time of his death the Carbondale Coal & Coke

Co. owed him one hundred and forty dollars for advance rent on royalty.

Interrogatory 9th by same. State for what year this $140.00 advance royalty became due, when it became due, and whether the Carbondale Coal & Coke Co. has ever paid it or any part of it to you as administratrix of the estate of Tinsley Priddy, deceased, or in any other capacity, and whether (if you know or believe) they ever paid any part of it to Tinsley Priddy in his lifetime.

Ans. 9th. For year 1884, and became due January 1st, 1885; they have not paid any part of it to me in any capacity. I am satisfied they never paid any part of it to Tinsley Priddy in his lifetime.

Interrogatory 10th by same. State whether the Carbondale Coal & Coke Co. paid Tinsley Priddy in his lifetime the advance royalty accruing annually on said lease from the time it was made till the beginning of the year A. D. 1884, and whether they ever made any objection to paying the royalty to him because he was not the person entitled to receive it.

Ans. 10th. I think they paid him everything up to the year 1884. If they ever made any objections I did not know it.

203 Interrogatory 11th by same. Please state whether the Carbondale Coal & Coke Co. has ever been in possession of the land or any part of it leased to said company by Tinsley Priddy and yourself. State whether it has ever entered into or upon said lands or ever exercised or attempted to exercise any possession or right of possession of said lands either for mining purposes or otherwise.

Ans. 11th. None that I know of.

Interrogatory 12th by same. Please state who is the actual possessor of said lands; whether that possession is full, peaceable, quiet, and unobstructed.

Ans. 12th. I am in possession of all the lands, and no person has interfered or attempted to interfere with my possession.

Interrogatory 13th by same. How long have you had and held such possession?

Ans. 13th. Ever since the death of Tinsley Priddy.

And further this deponent saith not.

her
SARAH x PRIDDY.
mark.

And the said CATHARINE WALDRON, being next called and exam-ed, testified and deposed as follows:

Deposition of Catharine Waldron.

Interrogatory 1st by counsel for intervening petitioners. Please state your name, age, occupation, and place of residence.

204 Ans. 1st. Catharine Waldron; age, 59 years; housekeeper and farmer; reside about 1¾ miles northwest of Carterville, in the county of Williamson and the State of Illinois.

Interrogatory 2nd by same. State whether you are one of the intervening petitioners in this suit.

Ans. 2nd. Yes; I suppose I am.

Interrogatory 3rd by same. Were you acquainted with Henry Waldron in his lifetime? If so, state what relation he bore to you, when and where he died, and whether he left a*t* last will and testament.

Ans. 3rd. Henry Waldron was my husband. He died on the 22nd day of Aug., 1869. He died at the place where I now reside. He left no will.

Interrogatory 4th by same. State whether he left any real estate at his death, how much, and give description of it.

Ans. 4th. He left 105 acres, described as follows: The W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of section 3 and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of section 4, in township 9 south, range 1 east, of the third principal meridian.

Interrogatory 5th by same. State whether he left any children. If so, how many? Give the name and age of each.

Ans. 5th. He left 8 children. Their names: Emma, now Emma Morgan, age about 38 years; Israel Waldron, age about 36
205 years; Mary, now Mary Fowler, age about 33 y'rs; Jacob Waldron, now dead, born in 1855 and died in 1877, and left no children and no will; David Waldron, age about 29 years; Henry Waldron, age about 22 years; Catharine, now Catharine McCree, age about 19 years.

Interrogatory 6th by same. State whether the lands of which Henry Waldron died possessed of were after his death leased for mining purposes to the Carbondale Coal & Coke Co. If so, state about when they were so leased and by whom. State also whether at that time either you or any of the children of said Henry Waldron had sold or conveyed any interest in said land.

Ans. 6th. There were. Date of lease, 5th day of April, A. D. 1873, by Catharine Waldron, Mary Waldron, now Mary Fowler, and Catharine Waldron, guardian of Jacob, Daniel, Martha, Henry, and Catharine, children and minor heirs of Henry Waldron, deceased. Before the lease was given, Emma Morgan deeded to me her undivided interest of said 105 acres. Said deed was signed, sealed, acknowledged, and delivered by Emma Morgan and her husband, Silas Morgan, in the words and figures following, "to wit:"

STATE OF ILLINOIS, }
Williamson Co. }

This *intendure* made and entered into this twenty-seventh day of October, in the year of our Lord one thousand eight hundred
206 and seventy-one, between Silas Morgan and Emma Morgan, his wife, parties of the first part, and Catharine Waldron, party of the second part, witness *oath:*

That for and in the consideration of the sum of two hundred and forty-eight dollars in hand paid, the receipt whereof is hereby acknowledged, the said part*y* of the first part, being heirs-at-law of Henry Waldron, deceased, ha*s*t this day granted, bargained, and sold, and by *their promise* do grant, bargain, and sell, unto the said party of the second — their undivided interest *to* the following-described lands (to wit): The northeast quarter of the northeast quar-

ter of section four (4), township 9 south, of range one (1) *each*, containing thirty-three acres; also the west half of the northwest quarter section three, township 9, range 1 *each*, containing sixty-nine acres and $\frac{70}{100}$, the said land herein conveyed being an eighth interest in and to the above-described lands, together with all and singular the hereditaments and appurtanences thereunto belonging or in anywise appertaining, to the said Chtharine Waldron, her heirs and assigns forever.

In testimony whereof the said party of the first part have hereunto set their hand- and seals the day and year above.

SILAS MORGAN. [SEAL.]
EMMA MORGAN. [SEAL.]

Witness:
JAMES SCOTT.

207 STATE OF ILLINOIS, }
Williamson Co. }

I, James Scott, an acting justice of the peace in and for the said county, in the State aforesaid, do hereby certify that Silas Morgan and Emma Morgan, his wife, who are personally known to me as the persons whose names are subscribed to the above deed, *approved* before me this day in person and acknowledged that they executed the within deed for the *proposed expound* and as their free and voluntary act; and the said Emma Morgan, having been by me examined separate and apart from her said husband, and the contents and meaning of said deed having been by me made known and fully explained, acknowledged that she freely and voluntary*ly* executed the same and relinquished all her rights and title to said described lands, and that she does not wish to retract the same.

Given under my hand and seal this 27th day of October, 1871.

JAMES SCOTT,
Justice of the Peace.

On the back of said deed the following indorsement: Recorded in Book Z, page 211. Filed 9th day of April, 1872. J. W. Hartwell, recorder. Fee, $1.00, paid.

208 Interrogatory 7th by same. You may state who owned the life estate or fee simple of said lands from the first day of January, A. D. 1883, to the first day of January, A. D. 1885, inclusive; by what deeds or conveyances such persons became such owners.

Ans. 7th. By conveyance from Emma Morgan I became the owner of one undivided eighth, and by conveyance from Isreal Walton the owner of one undivided eighth; by conveyance of Mary Fowler the owner of one undivided eighth, and by conveyance from Jacob Waldron, deceased, I became the owner of one thirty-sixth. During that period I was guardian for Henry Waldron and Catherine Waldron, Jr., who each owned five thirty-sixths of said land as heirs of Henry Waldron, deceased, and Jacob Waldron, deceased, subject to my dower and homestead rights in said lands. David Waldron was the owner of $\frac{1}{36}$ of said land during that period, one-half of

which as *him* Henry Waldron, deceased, and Jacob Waldron, deceased, the other half of which as grantu*re*. of Martha Nanglo & Thomas Nanglo, her husband, subject to my rights of dower and homestead in said lands.

Commission adjourned at 6 o'clock p. m., this 26th day of May, 1886, until to-morrow at 8 o'clock a. m., 1886.

At 8 o'clock a. m., May 27th, 1886, Catharine Waldron's deposition is resumed as follows:

209 Interrogatory 8th by the same. Have you the deeds made to you by Mary Fowler and Israel Waldron? If so, please produce them and have them copied and made a part of your answer to this interrogatory.

Ans. 8th. I have the deeds here; they are in the words and figures, to wit:

The grantor, Mary Fower, wife of Abraham Fowler, of the county of Williamson and State of Illinois, for the consideration of two hundred and thirty-five dollars, convey- and quitclaims to Catharine Waldron, of the same county & State, all interest (being an undivided eighth) in the following-described real estate, to wit: The west half of the northwest quarter of section three (3) (containing $69\frac{70}{100}$ acres) and the northeast quarter of the northeast quarter of section four (4), containing about 33 acres, and all in township nine (9) south, and in range one (1) east, of the third principal meridian, situated in the county of Williamson, in the State of Illinois.

Dated this the 17th day of September, A. D. 1874.

MARY FOWLER. [SEAL.]

STATE OF ILLINOIS, }
Williamson Co. }

I, Jno. D. Herrin, an acting justice of the peace in and for the county aforesaid, do hereby certify that Mary Fowler, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said
210 instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this the 17th day of September, A. D. 1874.

JNO. D. HERRIN, *J. Peace.* [SEAL.]

On the back of said deed is the following indorsement:
Quitclaim deed. Mary Fowler to Catherine Waldron.

STATE OF ILLINOIS, }
Williamson County, } *ss*:

The within deed was filed for record in the recorder's office of

Williamson county on the 7th day of October, A. D. 1874, at 2 o'clock p. m., and duly recorded in Book 5 of Deeds, on page 366.

C. H. DURISON,
Recorder of Williamson Co.

Fees paid.

The deed of Israel Waldron is in the words and figures following:

The grantors, Israel Waldron and Eliza Waldron, his wife, of the county of Williamson and the State of Illinois, for and in consideration of two hundred and forty dollars in hand paid, convey and warrant to Catharine Waldron, of the county of Williamson and the State aforesaid, the following-described real estate, "to wit:" One undivided eighth part of the west half of the northwest quarter of section three (3), containing $69\frac{70}{100}$ acres, and one undivided eighth part of the northeast quarter of the northeast quarter of section four (4), containing about 33 acres, all in township nine (9) south and
211 in range one (1) east, of the third principal meridian, situated in Williamson county and the State of Illinois, hereby releasing and renouncing all claim under and by virtue of the homestead exemption lands of this State.

Dated this 6th day of March, A. D. 1878.

ISRAEL WALDRON. [SEAL.]
ELIZA A. WALDRON. [SEAL.]

STATE OF ILLINOIS, }
Williamson Co., } *ss:*

I, James M. Washburn, master in chancery in and for said county, in the State aforesaid, do hereby certify that Israel Waldron & Eliza A. Waldron, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and claim of homestead.

Given under my hand and seal officially on the 6th day of March, A. D. 1878.

JAMES M. WASHBURN,
[SEAL.] *Master in Chancery for Williamson Co., Illinois.*

On the back of said deed is the following indorsement:

Israel Waldron and wife t- Catherine Waldron. Warranty deed.

STATE OF ILLINOIS, }
Williamson Co., } *ss:*

This instrument was filed for record on the 11th day of March, 1878, at 11 a. m., and duly recorded in Book 8 of Records, page 367.

M. S. STRIKE, *Recorder.*

212 Interrogatory 9th by same. State whether your dower and homestead in said lands were ever assigned and set apart to you.

Ans. 9th. No, sir; they were not.

Interrogatory 10th by same. State who had and held the possession of said lands from the death of Henry Waldron, your husband, till after the filing of the intervening petition in this case.

Ans. 10th. I have had it under my possession since he died until that time, except what belonged to David Waldron. David took possession about the year 1879 or 1880 of his share of about $\frac{5}{18}$; he has held possession from that time until now.

Interrogatory 11th by same. You may state whether any other person or corporation has had or held any possession of said lands or has attempted to exersize any right of possession of said land- or any part of them for the purpose of mining or otherwise between the 8th day of March, A. D. 1876, and about the 19th day of September, A. D. 1885.

Ans. 11th. No.

Interrogatory 12th by same. State whether on the first day of January, A. D. 1885, the Carbondale Coal & Coke Co. was indebted to you and David Waldron for advance royalty due on said lands; and, if so, state for what years and how much; how much in your own right and how much as guardian of Henry Waldron and Catharine Waldron, Jr.

Ans. 12th. Yes; for the years 1882, 1883, & 1884; $105.00
213 for each year, or $315.00 for the three years. About $130.00 is due me in my own right and about $87.50 as guardian for Henry and Catharine J. Waldron. This does not include interest for delay of payment.

Interrogatory 13th by same. State whether your son, Israel Waldron, ever signed the lease made by you and Mary Waldron to the C. C. & C. Co. and whether, to your knowledge, he ever accepted any advance royalty from said company.

Ans. 13th. To the best of my knowledge, he never signed it. He never accepted any royalty from the company and I never received any for him.

Interrogatory 14th by same. You may state whether said C. C. & C. Co. have paid you advance royalty on said lands, what amount for each year, and in what year their last payment was made, and whether they have objected to pay you on account of your right to demand and receive being defective.

Ans. 14th. Yes; they paid up to 1881 $91.85 for each year; last paid in 1882 for the year 1881. They never objected to my right to receive the amount due me.

Interrogatory 15th by same. Why did not the C. C. & C. Co. pay to you the full amount of $106.00 for each year?

Ans. 15th. I suppose the reason was that Israel Waldron did not sign the lease. He was the owner of $\frac{1}{8}$ of the land until the 6th day of March, 1878.

214 Interrogatory 16th by same. After Israel Waldron sold and conveyed to you his part of the land, in A. D. 1878, did or

did not the C. C. & C. Co. offer to pay you any more than the $91.85 per year for advance royalty on the land?

Ans. 16th. No, sir; they did not.

Interrogatory 17th by same. Since the first day of January, A. D. 1885, have there been any conveyances of said lands so as to divide them in severalty among the joint owners? If so, state what and when such conveyances were made.

Ans 17th. On the 8th day of January, 1880, Catharine McCree and her husband, Frank McCree, conveyed all their interest in said lands to me. On the 19th day of September, 1885, myself and my son, Henry Waldron, sold and conveyed to Daniel Waldron, Jr., 44 acres off the south end of the west half of the northwest quarter of section 3, in township 9 south, range one east, in Williamson Co., Ill.; also Daniel Waldron, Jr., and his wife sold and conveyed to me during my life, remainder to Henry Waldron, 26 acres off the northeast of the west ½ of the northwest quarter of section 3; also 18 acres off the east side of the N. E. quarter of the N. E. quarter in section 4, all in township 9 south, range one east, in Williamson Co., Ill., and on the same day myself and my son, Henry Waldron, and Daniel Waldron and his wife sold and conveyed to Israel Waldron 15 acres off the west side of the N. E. quarter of the N. E. quarter of section 4, township 9 south, range one east, of the
215 third P. M., reserving to Catharine Waldron until her death ¼ of all the crops from this tract.

Interrogatory 18th by same. You may state whether these several tracts of land are now in the actual and several possession of said several grantors, and whether in these conveyances any reser-ation of coal or other mineral was made in or under said land, or whether any mining privileges were reserved for the benefit of any person or corporation.

Ans. 18th. I am in actual possession of the land I got, Israel is in actual possession of the land he got, and David is in actual possession of the land he got. There was nothing said about the coal or mining privileges, to the best of my knowledge.

Interrogatory 19th by same. State whether at the time you and Henry Waldron and David Waldron leased said lands for mining purposes to E. A. Hitchcock you were informed and believed that your lease to the C. C. & C. Co. had been adjudged and deemed forfeited, null, and void, and whether you had any information that said decree had been opened and a rehearing granted.

Ans. 19th. I understood that the lease of the C. C. & C. Co. was null and void, and I had not then heard that the case was reopened.

Interrogatory 20th by same. Are you acquainted with G. T. Johnson, one of the intervening petitioners? If so, how long have you known him, how far do you reside from him, and is there any relationship between his family and yours? If so, state the relationship.

216 Ans. 20th. Yes. I have known him for about 20 years. I reside about one mile from him. My son married his daughter.

Interrogatory 21st by same. You may state whether about a year

ago he came with James M. Washburn to your house to see you in regard to beginning a suit in the United States court to either collect the advance royalty due on mining leases to the C. C. & C. Co. or to to have the leases adjudged forfeited.

Ans. 21st. Yes, sir.

Interrogatory 22nd by same. You may state whether on that occasion he expressed for himself a preference either for collecting the money or for obtaining a forfeit of the leases. State, as near as you can, what he said.

Ans. 22nd. I asked Mr. Johnson what he was going to do. I asked him if he was willing to loose the money that was due him to get a forfeit of the lease. I told him he would not be loosing as much as me. I said if he was willing to loose his I was willing to loose mine. The above is as near as I can recollect. He said, my understanding was, he was willing to loose the amount of money due him to get shut of the lease. If he could not get shut of the lease he wanted the sum of money due him.

Interrogatory 23rd by same. You may state whether the Carbondale Coal & Coke Co. or its receiver has paid or offered you any money as advance royalty on said lands since the year A. D. 1882.

Ans. 23rd. No, sir; they have not.

And further the deponent saith not.

her
CATHARINE x WALDRON.
mark.

217 ISRAEL WALDRON, being next called, sworn, and examined, testified and deposed as follows:

Deposition of Israel Waldron.

Interrogatory 1st by counsel for intervening petitioners. Please state your name, occupation, age, & place of residence.

Ans. 1st. Israel Waldron; age, 36 years; farmer; reside about one mile and a quarter northwest of Carterville, in the Co. of Williamson, in the State of Illinois.

Interrogatory 2nd by same. Are you related to Henry Waldron, deceased, and to Catharine Waldron, the witness last examined? If so, state the relationship.

Ans. 2nd. I am their son.

Interrogatory 3rd by same. Do you know anything of the Carbondale Coal & Coke Co. and whether they had a mining lease of the W. ½ N. W. quarter of sec. 3 and the N. E. ¼ of the N. E. quarter of sec. 4, in township 9 south, range 1 east, in Williamson Co., Ill.?

Ans. 3rd. Yes; they had a lease.

Interrogatory 4th by same. State about when that lease was made, who owned the land at the time it was made, whether you had any interest in the land; if so, how much and how long you continued to own it, and whether you ever signed or acknowledged a lease of it, and whether you were ever offered by or accepted from the Carbondale Coal & Coke Co. any money or advance royalty on a mining lease of that land.

218 Answer 4th. About April 5th, 1873; mother, myself, and brothers and sisters, except Emma Morgan. My interest was $\frac{1}{8}$, subject to the dower and homestead of my mother. I owned that interest until the 6th day of March, 1878; never signed or acknowledged any lease of said land, nor did the C. C. & C. Co. ever offer me any money, nor did I accept any money from the C. C. & C. Co. as advance royalty on the lease of said lands.

Interrogatory 5th by same. State whether you now own a part of said lands in severalty; if so, how much and what part and who is in the actual possession of such part.

Ans. 5th. I now own 15 acres of the land described as follows, to w-: 15 acres of- the west side of the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, sec. 4, township 9, range 1 east, of the 3rd P. M. I am in possession of the 15 acres.

Interrogatory 6th by same. You may state whether the C. C. & C. Co. or its receiver has exercised any act of ownership or right of possession of any of the lands leased by your mother, Catharine Waldron, and your sister, Mary Waldron, to said company since the 1st day of January, A. D. 1885, for mining purposes or otherwise, till the present time.

Ans. 6th. No, sir.

Interrogatory 7th by same. You may state whether the C. C. & C. Co. or its receiver have ever been in possession of said lands or any part of it for mining purposes or otherwise.

219 Ans. 7th. No, sir.

And further the deponent saith not.

ISRAEL WALDRON.

JOSEPH ——, being next called and examined, testified and deposed as follows:

Deposition of Joseph Waldron.

Interrogatory 1st by counsel for intervening petitioners. Please state your name, age, occupation, & place of residence.

Ans. 1st. Joseph Waldron; age, about 37 years; occupation, a miner and farmer. I reside about two miles northwest from Carterville, in the county of Williamson, in the State of Ill. I reside on the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of sec. 33, in township 8, range one east, of the 3rd P. M.

Interrogatory 2nd by same. State whether this land was ever leased for mining purposes to the Carbondale Coal & Coke Co.; if so, about when and by whom.

Ans. 2nd. Yes; on the 11th day of March, 1873, it was leased by Thomas Waldron and his wife, Barbara Waldron, to the C. C. & C. Co.

Interrogatory 3rd by same. Were Thomas Waldron & Barbara related to you? If so, how?

Ans. 3rd. Thomas Waldron was my father and Barbara Waldron was my stepmother.

Interrogatory 4th by same. Is Thomas Waldron living or dead?

If dead, about when did he die and where, and did he die testate or intestate?

Ans. 4th. He is dead. He died on or about the 11th day
220 May, 1876. He died on the same land on which I now reside, without a will.

Interrogatory 5th by same. Did he own and possess any lands at the time of his death? If so, describe them.

Ans. 5th. Yes; he owned the same lands he leased to the C. C. & C. Co.

Interrogatory 6th by same. Did he leave surviving him a widow? If so, is she still living? If not, about when and where did she die?

Ans. 6th. He left a widow, Barbara Waldron, who is now dead. She died in February, 1884. She died on the same land her husband owned.

Interrogatory 7th by same. State whether said Thomas Waldron at his death left any children and grandchildren as his heirs-at-law; if so, how many children, giving the name of each, and also how many grandchildren, giving the name of each; also the name of the deceased parent.

Ans. 7th. He left only three children, "to wit," Daniel Waldron, Sr., Martha, now Martha Guest, and myself. He left the following-named grandchildren: Children of a deceased son, Henry Waldron; their name-: Emma Morgan, Israel Waldron, Mary Fowler, Daniel Waldron, Martha Naugba, Catharine McCree, and Henry Waldron, all of who are still living, and also Jacob Waldron, who died intestate, without issue, about 1877.

Interrogatory 8th by same. You may state whether the
221 above-named heirs-at-law of Jacob Waldron, deceased, have conveyed their interest in said land to you, giving each conveyance in full.

Ans. 8th. Yes, sir; they have. David and Mary Jane, his wife, conveyed their interest on the 22nd day of March, 1879, in words and figures as follows, to wit:

The grantors, Daniel Waldron and Mary Jane Waldron, his wife, of the village of Carterville, in the county of Williamson and the State of Illinois, for and in consideration of fifty dollars in hand paid, convey and warrant to Joseph Waldron all of our undivided interest, being one-fourth, in and to Joseph Waldron, of the county of Williamson and State of Illinois, the following-described real estate, "to wit:" The southwest fourth of the southeast quarter of sec. 33, township 8 south, of range one east, containing forty acres, more or less, situated in the county of Williamson and State of Illinois, hereby releasing and renouncing all rights under and by virtue of the homestead exemption laws of this State.

Dated this 22nd day of March, A. D. 1879.

DAVID WALDRON. [SEAL.]

her
MARY JANE x WALDRON. [SEAL.]
mark.

Signed, sealed, and delivered in presence of—
HARRY JAMES.
ERNEST BOND.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, John H. Farris, a justice of the peace in and for the said county, of the State aforesaid, do hereby certify that David Waldron
222 and Mary Jane Waldron, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and claim of the right of homestead.

Given under my hand and seal this the 22nd day of March, 1879.

JOHN H. FARRIS,
Justice of Peace.

On the back of said deed is the following indorsement:

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, H. Hendrickson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the within and foregoing instrument of writing was filed for record on the 20th day of March, A. D. 1886, at 1 o'clock p. m., and duly recorded in volume 23 of Deeds, on page 45.

In testimony whereof I have hereunto set my hand the day and date aforesaid.

H. HENDRICKSON, *Clerk.*

Fees, 50c.

And on the 17th day of March, 1884, Martha Guest and her husband, Simon Guest, conveyed their interest in said lands to me in figures and words, "to wit:"

The grantors, Martha Guest and her husband, Simon Guest, for the consideration of $50.00, convey and quitclaim to Joseph Waldron, of the village of Carterville, county of Williamson, and State
223 of Illinois, all interest in the following-described real estate, "to wit:" The southwest quarter of the southeast quarter of sec. 33, township 8 south, of range one (1) east, containing 40 acres, more or less, situated in the county of Williamson and the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 17th day of March, A. D. 1884.

her
MARTHA x GUEST. [SEAL.]
mark.
SIMON GUEST. [SEAL.]

Signed, sealed, and delivered in presence of—
JONATHAN T. HUDSON.
FRANK WOOLF.

STATE OF OHIO, } ss:
Stark County, }

Before me, a justice of the peace in and for said county, personally appeared the above-named Martha Guest and Simon Guest, who acknowledged that they did sign and seal the foregoing instrument, and that the same is their free act and voluntary deed. I further certify that I did examine the said Martha Guest separate and apart from her husband and did there and then make known to her the contents of the foregoing instrument, and upon that examination she declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

In testimony whereof I hereunto set my hand and seal officially this 27th day of March, A. D. 1884.

JOHNATHAN T. HUDSON,
Justice of the Peace in and for Stark Co., Ohio.

224 THE STATE OF OHIO, } ss:
Stark County, }

I, John McGregor, clerk of the court of common pleas in court of law and record of said county, do hereby certify that Johnathan T. Hudson, before whom the annexed acknowledgement was taken, was at its date a justice of the peace in and for said county duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and that his signature is genuine, and that the annexed instrument is executed and acknowledged according to the laws of the State of Ohio.

In testimony whereof I hereunto subscribed my name and affix the seal of said court, at the city of Canton, this 27 day of March, A. D. 1884.

[COUNTY SEAL.] JOHN McGREGOR, *Clerk.*

On the 13th day of October, A. D. 1879, Silas Morgan and Emma Morgan, his wife, conveyed their interest in said lands to me in words and figures, "to wit:"

The grantors, Silas Morgan and Emma Morgan, his wife, in the county of Williamson and State of Illinois, for the consideration of fifty dollars, convey and quitclaim to Joseph Waldron, of the county of Williamson and State of Illinois, all interest in the following-described real estate: The undivided one-fourth of the southwest fourth of the southeast quarter of section thirty-three (33), township eight (8) south and in range one (1) east of the third principal
225 meridian, situated in the county of Williamson and the State of Illinois, hereby releasing and waiving all right under and by virtue of the homestead exemption laws of this State.

Dated this 13th day of October, A. D. 1879.

SILAS MORGAN. [SEAL.]
EMMA MORGAN. [SEAL.]

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, John W. Morris, a justice of peace in and for the said county, in the State aforesaid, do and hereby certify that Silas Morgan and Emma Morgan, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and claim of the right of the homestead.

Given under my hand and seal this 13th day of Oct., A. D. 1879.

JOHN W. MORRIS,
Justice of Peace.

On the back of said deed is indorsed:

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, H. Hendrickson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the within and foregoing instrument of writing was filed for record on the 20th day of March, A. D. 1886, at 1 o'clock p. m., and duly recorded in volume 22 of Deeds, page 56.

226 In testimony whereof I have hereunto set my hand the day and date aforesaid.

H. HENDRICKSON, *Clerk.*

Fees, 50c.

Also, on the 28th day of December, 1880, Mary Fowler and her husband, Abraham Fowler; Israel Waldron and his wife, Eliza Waldron, conveyed to me their interest in said lands in words and figures, "to wit:"

The grantors, Mary Fowler and her husband, Abr. Fowler; Israel Waldron and his wife, Eliza Waldron, of the county of Williamson and State of Ill., for the consideration of twenty dollars ($20.00), convey and quitclaim to Joseph Waldron all interest in the following-described real estate, "to wit:" The S. W. quarter of the S. E. quarter of sec. 33, township 8 south and in range 1 east of the 3rd P. M., situated in the Co. of Williamson and State of Ill., hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 28th day of December, A. D. 1880.

her
MARY x FOWLER. [SEAL.]
mark.

his
A. x FOWLER. [SEAL.]
mark.

his
ISRAEL x WALDRON. [SEAL.]
mark.

her
ELIZA x WALDRON. [SEAL.]
mark.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, R. H. H. Hampton, a notary public, do hereby certify that Mary Fowler and her husband, A. Fowler, and Israel Waldron and
227 Eliza Waldron, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as having executed the same, *approved* before me this day in person and acknowledged that they signed, sealed, and delivered —, including the release and claim of the right of homestead, as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of December, A. D. 1880.

[SEAL.] R. H. H. HAMPTON, *N. P.*

Indorsed on the back of said deed, "to wit:"

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, H. Hendrickson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the foregoing instrument of writing was filed for record on the 20th day of March, A. D. 1886, at 1 o'clock p. m., and duly recorded in volume 22 of Deeds, on page 572.

In testimony whereof I have hereunto set my hand *and* the day and date aforesaid.

H. HENDRICKSON, *Clerk.*

Fees, 50c.

Also, on the 12th day of September, A. D. 1879, William D. Waldron, Martha Naugler, and Thomas Naugler, her husband, conveyed to me their interest to said land in words and figures, "to wit:"

228 The grantors, William D. Waldron and Thomas Naugler and Martha Naugler, his wife, of Williamson Co., in the State of Ill., in consideration of ten dollars paid to said Wm. D. Waldron and ten dollars paid to said Martha Naugler and Thomas Naugler, hereby convey and quitclaim to Joseph Waldron, of the county and State aforesaid, all interest in the following-described real estate, "to wit:" The S. W. quarter of the S. E. quarter of sec. thirty-three (33), in township eight (8) south and in range one (1) east of the third principal meridian, situated in the Co. of Williamson and the State of Ill., hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated on this the 12th day of September, A. D. 1879.

his
WILLIAM D. x WALDRON. [SEAL.]
mark.
MARTHA NAUGLER. [SEAL.]
THOMAS NAUGLER. [SEAL.]

Attest: JAMES M. WASHBURN.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, James M. Washburn, master in chancery for Williamson Co., in the State of Ill., do hereby certify that William D. Waldron, Martha Naugler, and Thomas Naugler, her husband, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and claim of the right of homestead.

229 Given under my hand and official seal on this the 12th day of September, A. D. 1879.

JAMES M. WASHBURN,
Master in Chancery for Williamson County, Illinois.

And indorsed on said deed is the following, "to wit:"

STATE OF ILLINOIS, } ss:
Williamson Co., }

This instrument was filed for record the 20th day of March, A. D. 1886, at 1 p. m., and recorded in Book 14 of Deeds, on page 570.

H. HENDRICKSON, *Clerk.*

Also, on the 27 day of June, A. D. 1885, Henry Waldron, Frank McCree, and his wife, Catharine McCree, of the county of Williamson and the State of Ills., for and in consideration of twenty dollars ($20.00) in hand paid, convey and quitclaim to Joseph Waldron, of the county of Williamson and the State of Illinois, the following-described real estate, "to wit:" The S. W. quarter of the S. E. quarter, in section 33, township 8 south, range one (1) east, of the 3rd P. M., situated in the county of Williamson and the State of Illinois, hereby releasing and waiving all right of the homestead exemption laws of this State.

Dated this 29th day of June, A. D. 1885.

HENRY WALDRON. [SEAL.]
his
FRANK x McCREE. [SEAL.]
mark.
CATHARINE McCREE. [SEAL.]

Signed, sealed, and delivered in presence of—
—— ——.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, R. H. H. Hampton, a notary public in and for the said
230 county and the State aforesaid, do hereby certify that Henry Waldron, Frank McCree, and Catharine McCree, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day

in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waive- of the right of homestead.

Given under my hand and official seal this 27th day of June, A. D. 1885.

R. H. H. HAMPTON,
[SEAL.] *Notary Public.*

The following indorsement is on the back of said deed:

STATE OF ILLINOIS, }
Williamson Co., } *ss*:

I, H. Hendrickson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the within and foregoing instrument of writing was filed for record on the 20th day of March, A. D. 1886, at 1 o'clock p. m., and duly recorded in volume 14 of G. C. Deeds, on page 571.

In testimony thereof I have hereunto set my hand the day and date aforesaid.

H. HENDRICKSON, *Clerk.*

Fees, 50c.

Interrogatory 9th by same. You may state whether you had contracted with Henry Waldron and Catharine Waldron, Jr., for their interests in said land some time prior to the making of the
231 deed by them to you; and, if so, state about how long prior, and state also why they did not make the deed at the time of making the contract.

Ans. 9th. I made the contract fully a year before I got the deed, and the principal reason for waiting so long was that they were both minors at the time of the contract. Henry became of age in May or June, 1885, and Catharine became of age about the last of the year 1884.

Interrogatory 10th by same. Who have had possession of said lands since the death of Thomas Waldron?

Ans. 10th. Barbara Waldron had full possession until her death. Since that time I have had full possession.

Interrogatory 11th by same. State whether the Carbondale Coal & Coke Co. owed you anything as advance royalty on their mining lease of said lands on the 1st day of January, A. D. 1885. If so, state for what year or years it had accrued, how much had accrued, and whether they had paid you anything on said royalty. If so, how, when, and how much?

Ans. 11th. There was due me $33.34 for advance royalty accrued from the 1st day of March, 1884, to the 1st day of January, 1885. The royalty for the months of January and February was paid me in mdse. by the C. C. & C. Co.

And now, at 9.45 p. m., May 27, 1886, adjourned until 7.30 a. m. to-morrow.

At 7.30 a. m., May 28, 1886, the examination of JOSEPH T. WALDRON was resumed as follows:

Interrogatory 12th by same. State whether you demanded
232 payment of said $33.34 advance royalty of and from said coal & coke Co. or *if* and from John W. Harrison, the receiver of said company. If so, state how and when you made such demand.

Ans. 12th. I made the demand in writing of John W. Harrison, receiver of the C. C. & C. Co. in the words and figures following, "to wit:"

CARTERVILLE, ILL., *Jan.* 1, 1885.

To John W. Harrison, receiver of the Carbondale Coal & Coke Co.

SIR: There is now due me for rent or lease on S. W. ¼ of the S. E. ¼ of sec. 33, township 8 south, of range 1, forty dollars for the year 1884, less the amount received at the company's store at Carterville, Ill., in goods. I hereby demand payment of the amount due me for the rent as aforesaid, and if payment be not made within ten days of the date of the demand I shall claim a forfeiture in accordance with the terms of the lease heretofore given to you by me for minerals underlying said above-described real estate.

Yours truly, JOSEPH WALDRON.

I delivered this demand to William Henderson on the 1st day of January, 1885, to be mailed to John W. Harrison, receiver for the C. C. & C. Co., at St. Louis, Mo.

Interrogatory 13th by same. You may state whether John W. Harrison or the C. C. & C. Co. ever paid you anything within ten days after this demand or at any time since said demand.

Ans. 13th. No, sir; neithe- he nor the Carbondale Coal & Coke Co. have paid me anything since that time (the first day of January, 1885).

233 Interrogatory 14th by same. You may state whether the C. C. & C. Co. or John W. Harrison have had any actual possession of said lands or have exercised any acts of possession or control of said lands or any part thereof since January 10th, 1885.

Ans. 14th. No, sir; they never have to my knowledge.

Interrogatory 15th by same. You may state whether you reside on said land, and, if so, how long you have continuously resided on it, and if said company or their receiver had taken any actual possession of said lands for mining purposes you would have been likely to know it.

Ans. 15th. Yes; I reside on said lands and have been residing on said land for the past five years. They have never taken any possession for mining purposes, and if they had I would have known it.

Interrogatory 16th by same. Are you acquainted with G. T. Johnson, one of the intervening petitioners; if so, how long have you known him, how far do you reside from him, and how long have you so resided?

Ans. 16th. I have known him for about 25 years. I reside about

one mile from him—a little southwest on a direct line and about 1¾ miles by wagon road. I have resided within said vicinity for about 25 years.

Interrogatory 17th by same. State whether said Johnson had a conversation with you about the month of May, A. D. 1885, in regard to obtaining a forfeiture of the lease of his lands and
234 of your land to the C. C. & C. Co.; and, if so, state as near as you can where and when this *consideration* took place and what was said by said Johnson.

Ans. 17th. Yes, sir; he had conversation with me on the subject in Carterville, Ill., in the latter part of May or the beginning of June, 1885. He met me on the street and told me he wanted to see me a minute. He called me to one side and told me concerning—he wanted to know how I felt about it. He said he was getting tired of being humbug-ed about his leases. He wanted to know how I felt about the matter. I told him I did not know what to do at that time. After I told that he went on to tell me how this matter could be brought about. He said Mr. Barn, of Carbondale, and Mr. Washburn, of Carterville, would get us a forfeiture of the leases, and if they could not get a forfeiture they would get our money—10%—and if they got the forfeiture they would not charge us anything. He also said if they got a forfeiture another company would lease our land. He said he was willing to go into the suit, and recommended it to me.

And further this deponent saith not.

JOSEPH WALDRON.

ROBERT WINNING, being next called, sworn, and examined, testified and deposed as follows:

Deposition of Robert Winning.

Interrogatory 1st by counsel for intervening petitioners. Please state your name, age, occupation, and place of residence.

Ans. 1st. Robert Winning; age, 49 years; occupation, inspector of coal mines of the 5th district, Ill.; reside, Carterville, Williamson Co., Ill.

235 Interrogatory 2nd by same. State how long you have resided at Carterville.

Ans. *8th.* About 8 years.

Interrogatory 3rd by same. How long have you been inspector of coal mines, and what was your occupation before that time?

Ans. 3rd. I have been inspector 2½ years. I was mine boss for the C. C. & C. Co. about 4 years. I raised and laid track, and acted under Thomas McMartin, mine boss, for about 1½ y'rs.

Interrogatory 4th by same. You may state if prior to your residence in Carterville you were engaged in mining and prospecting for coal; and, if so, how long.

Ans. 4th. Yes; I had been mining and prospecting for about 30 years.

Interrogatory 5th by same. State whether you are well acquainted

with the coal mines of the C. C. & C. Co. at Carterville, and with the coal deposits there and in the vicinity, and what have been your opportunities of acquiring knowledge of them.

Ans. 5th. Yes; I was prospecting here before the mines were opened to find the limits of this coal field. I had charge and kept the journal of the holes. I put down about eight drill holes. After the mine had been opened about 6 years I began working in the mine, and while working here I was running track-laying, bossing, and prospecting.

Interrogatory 6th by same. About how thick is the vein of coal at Carterville and north and northwest from Carterville?

236 Ans. 6th. It runs from 8½ to 9½ feet.

Interrogatory 7th by same. About how many tons of coal should be taken from one acre of land if the coal of that thickness be properly and economically mined.

Ans. 7th. Over 7,000 tons per acre, allowing for 25% of slack and pillers for sustaining and keeping up the roof. In some places the above *and* of coal cannot be got on account of not being able to take the top coal, which is about 22 inches thick. When top coal cannot be got they can get 6,000 tons, allowing the same as above for slack and pillers.

Interrogatory 8th by same. State, if you know, how much coal has been mined annually by the C. C. & C. Co. for the last 10 or 12 years.

Ans. 8th. I cannot give the amount before the year 1880. In 1880, 150,000 tons; in 1881, 200,000 tons; in 1882, 240,000 tons; in 1883, 144,800 tons; in 1884, 108,735 tons; in 1885, 63,737 tons; the average per year from 1880 to 1886 is 181,664½ for year.

Interrogatory 9th by same. State, if you know, about how long the Carterville coal mines have been worked, and about how many acres have been exhausted.

Ans. 9th. They have been worked about 15 years; about 103 acres exhausted, according to Mr. Merriman's statement as sup't and mining engineer for the C. C. & C. Co., to the year 1884. He

237 gave me this statement as mine inspector for 5th district of the State of Illinois.

Interrogatory 10th by same. At the rate at which coal has been mined at Carterville for the last 15 years about how long would it take the C. C. & C. Co. to exhaust the lands held under lease by said company in the vicinity of Carterville, leasing out the lands of Catharine & David Waldrow, those *those* of Tinsley Priddy's heirs, and those of William Henderson and Joseph Waldron?

Ans. 10th. About 56 years, as they have exhausted about 11 acres per year, to the best of my knowledge, and I understand they have about 617 acres not worked out, deducting the above tracts.

And further this deponant saith not.

ROB'T WINNING.

WILLIAM HENDERSON, having been sworn, was next examined and testified as follows:

Deposition of Wm. Henderson.

Interrogatory 1st by counsel for intervening petitioners. Please state your name, age, occupation, and place of residence; also whether you are one of the intervening petitioners of this suit.

Ans. 1st. William Henderson; age, 40 years; occupation, miner and farmer. I reside about 2 miles N. W. of Carterville, in Williamson Co., Ill., and am one of the intervening petitioners.

Interrogatory 2nd by same. You may state whether the C. C. & C. Co. in the year 1873 leased for mining purposes the east half of the southeast quarter of sec. 33, in township 8 south and in
238 range one east, in Williamson county and State of Illinois.

Ans. 2nd. They did, on the 5th day of April, 1873.

Interrogatory 3rd by same. Who leases said lands to the Carbondale Coal & Coke Co.?

Ans. 3rd. Nancy Priddy, guardian of the heirs of Pettis Priddy, dec'd.

Interrogatory 4th by same. About when did Pettis Priddy die? Did he leave any last will? Did he leave a widow? If so, what was her name? And state whether she was the person who leased said lands to C. C. & C. Co. Did Pettis Priddy leave any children? If so, state the name and age of each as nearly as you can, and for which of them was Nancy Priddy the guardian.

Ans. 4th. I don't know how long he has been dead, but think he has been 22 years or more. He left no will that I heard of. He left Nancy Priddy his widow; she was the person who leased said lands to the C. C. & C. Co. He left 5 children—"names:" Paulina, now Paulina Sharen, age about 29 y'rs; Rhoda, now Rhoda Culp, age about 28 y'rs; Henry Priddy, age about 26 y'rs; Martha, now Martha Gooden, age about 24 y'rs; Susan, now Susan Mulkey, age about 22 y'rs. She was guardian for them all.

Interrogatory 5th by same. State whether Pettis Priddy left any other persons as his heirs-at-law.

Ans. 5th. None.

Interrogatory 6th by same. State whether Pettis Priddy died *signed* & possessed of any land in Williamson Co., Ill. If so, describe them.

239 Ans. 6th. He did, described as follows, "to wit:" The east ½ of the southeast quarter, in sec. 33, township 8 south of range one east of the 3rd P. M., in Williamson Co., Ill.

Interrogatory 7th by same. Who owned and possessed the lands on the 1st day of January, A. D. 1885? What conveyances affecting the title of them have been made since the death of Pettis Priddy or since they were leased by the C. C. & C. Co.?

Ans. 7th. I did. None between the death of Pettis Priddy and the lease of these lands on the 9th day of August, 1879. Paulina and her husband and Rhoda Culp and her husband conveyed to Patrick Gooden two undivided fifths of said land in the words and figures following, "to wit:"

The grantors, Paulina Sharer and Benj. Sharer, Rhoda Culp and Charles R. Colp, for and in consideration of sixty dollars in hand paid, convey and quit claim to Patrick Gooden, of the Co. of Williamson and the State of Ill., the following-described real estate, "to wit:" The undivided two-fifths of the east half of the S. E. quarter of sec. thirty-three (33), in township eight (8) south of range one (1) east of the 3rd P. M., containing 32 acres, more or less, situated in the Co. of Williamson, the State of Ill., hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 9th day of Aug., A. D. 1879.

PAULINA SHARER. [SEAL.]
his
BENJ. x SHARER. [SEAL.]
mark.
RHODA CULP. [SEAL.]
CHARLES R. COLP. [SEAL.]

Signed, sealed, & delivered in presence of—
JOSEPH WALDRON.

240 STATE OF ILLINOIS, } ss:
Williamson Co., }

I, John W. Morris, in and for the said county, in the State aforesaid, do hereby certify that Paulina Sharer and Benj. Sharer and Rhoda Culp & Chas. R. Culp, personally known to me to be the same persons whose names — subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waive- of the right of homestead.

Given under my hand and seal this ninth day of August, A. D. 1879.

JOHN W. MORRIS,
Justice of Peace.

On the back of said deed is the following indorsement:

STATE OF ILLINOIS, } ss:
Williamson Co., }

This indorsement was filed for record on the 23rd day of February, A. D. 1880, at 1 o'clock p. m., and recorded in Book 10 of Deeds on page 47—M. S. Strike, clerk and recorder—and on the 13 day of Dec., A. D. 1880, Martha Gooden, daughter of Pettis Priddy, deceased, and William Gooden, her husband, conveyed one undivided fifth of said lands to Patrick Gooden in words and figures following, "to wit:"

The grantors, William Goodin and Martha Gooden, in the Co. of Williamson and the State of Illinois, for and in consideration of sixty dollars in hand paid, convey and quitclaim to Patrick Gooden,

of the Co. of Williamson and the State of Ill., the following-
241 described real estate, "to wit:" The undivided one-fifth of the east half of the southeast quarter of section 33, township 8, range 1 east, of the 3rd P. M., situated in the Co. of Williamson, in the State of Ill., hereby releasing and waiving all rights under and by virtue of the homestead exemption law of this State.

Dated this 13th day of December, A. D. 1880.

Signed, sealed, and delivered in the presence of—

his
WILLIAM x GOODEN. [SEAL.]
mark.
MARTHA GOODEN. [SEAL.]

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, John W. Morris, a justice of the peace in and for the said county and the State aforesaid, do hereby certify that William Gooden and Martha Gooden, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and the waive- of the right of homestead.

Given under my hand and seal this 13th day of December, A. D. 1880.

JOHN M. MORRIS,
Justice of the Peace.

The following indorsement is on the back of said deed:

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, W. T. Davis, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby cer-
242 tify that the within and foregoing instrument of writing was filed for record on the 21st day of Feb., A. D. 1881, at 11 o'clock a. m., and duly recorded in volume 12 of Deeds, on page 256.

In testimony whereof I have hereunto set my hand *and* the day and date aforesaid.

W. T. DAVIS, *Clerk.*

And on the 8th day of March, A. D. 1881, Patrick Gooden and his wife, Nancy Gooden, conveyed and quitclaim- to me all interest in the following-described real estate in words and figures as follows, to wit:

The grantors, Patrick Gooden and his wife, Nancy Gooden, of the county of Williamson and the State of Illinois, for the consideration of six hundred and forty dollars, convey and quitclaim to Wm. Henderson all interest in the following-described real estate, to wit: The east half of the southeast quarter of section 33, township 8, range 11 east of the 3rd P. M., situated in the county of Williamson

and the State of Illinois, hereby releasing & waiving all right by virtue of the homestead exemption laws of this State.

Dated this 8th day of March, A. D. 1881.

his
PATRICK x GOODEN. [SEAL.]
mark.

her
NANCY x GOODEN. [SEAL.]
mark.

Witness:
R. H. H. HAMPTON.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, R. H. H. Hampton, a notary public, do hereby certify that Patrick Gooden and Nancy Gooden, — are personally known to
243 me to be the same persons whose names are subscribed to the foregoing instrument as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument, including the release and waive- of right of homestead, as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and not-r-al seal this 20th day of Aug., A. D. 1881.

[SEAL.] R. H. H. HAMPTON,
Notary Public.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, W. T. Davis, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the within and foregoing instrument of writing was filed for record on the 20th day of August, A. D. 188–, at 9 o'clock a. m., and duly recorded in volume 10 of Deeds, on page 576.

In testimony whereof I have hereunto set my hand the day and date aforesaid. W. T. DAVIS, *Clerk.*

And on February 23rd, A. D. 1882, Henry Priddy conveyed and quitclaimed all his interest in said lands in words and figures as follows:

The grantor, Henry Priddy (not married), for the consideration of one hundred dollars, conveyed and quitclaim- to William Henderson, of the Co. of Williamson and State of Illinois, all in-
244 terest in the following-described real estate, "to wit:" The east half of the southeast quarter of sec. 33, township 8 south, of range 1 east, of the 3rd P. M., situated in the Co. of Williamson and the State of Illinois, hereby releasing and waiving all right under and by virtue of the homestead exemption laws of this State.

Dated this 23rd day of Feb., A. D. 1882.

his
HENRY x PRIDDY. [SEAL.]
mark.

Signed in presence of—

—— ——.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, R. H. H. Hampton, a notary public in and for the said county, in the State aforesaid, do hereby certify that Henry Priddy, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waive- of the right of homestead.

Given under my hand and not-r-al seal this 23rd day of Feb., A. D. 1882.

[SEAL.] R. H. H. HAMPTON,
Notary Public, # 3284.

STATE OF ILLINOIS, } ss:
Williamson Co., }

This instrument was filed for record on the 27th day of July, A. D. 1882, at 3 o'clock — minutes p. m., and recorded in Book 14 of Deeds, page 93.

W. F. DAVIS,
Clerk & Recorder,
By W. H. HARDIN, *Dep't-.*

245 And on the 23rd day of May, A. D. 1882, Isaac V. Mulkey and his wife, Susan Mulkey, conveyed and quitclaimed to me all their interest in said lands in words and figures following, "to wit:"

The grantors, Isaac V. Mulkey and Susan Mulkey, his wife, for the consideration of sixty dollars (60.00), convey and quitclaim to William Henderson, of the Co. of Williamson, in the State of Ill., all interest in the following-described real estate, "to wit:" The east half of the southeast quarter of sec. 33, township 8, range 1 east, of the 3rd P. M., situated in the county of Williamson, in the State of Illinois, hereby releasing and waiving all right *by* and *under* virtue of the homestead exemption laws of this State.

Dated this 23rd day of May, A. D. 1882.

his
I. V. x MULKEY. [SEAL.]
mark.
her
SUSAN x MULKEY. [SEAL.]
mark.

Signed in presence of—
R. H. H. HAMPTON.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, R. H. H. Hampton, a notary public in and for the said Co., in the State aforesaid, do hereby certify that I. V. Mulkey and Susan

Mulkey, his wife, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed,
246 sealed, and delivered the said instrument as their free and voluntary act for the purposes and uses therein set forth, including the release and waive- of the right of homestead.

Given under my hand and not-r-al seal this 23rd day of May, A. D. 1882.

R. H. H. HAMPTON,
Notary Public.

[SEAL.]

3283.

STATE OF ILLINOIS, } ss:
Williamson Co., }

This instrument was filed for record on the 27th day of July, A. D. 1882, at 3 o'clock — minutes p. m., and recorded in Book 14 of Deeds, on page 94.

W. T. DAVIS,
Clerk & Record-,
By W. H. HARDIN, *Dep'dy.*

Interrogatory 8th by same. Who has had and held possession of said lands since the death of Pettus Priddy, and who (if you know) has paid the taxes thereon?

Ans. 8th. His widow, Nancy Priddy, held possession until about 1879 and paid taxes on same from 1879 to 1881. Patrick Gooden had possession and paid taxes in that time, and I have had possession since 1881 and paid taxes on same.

Interrogatory 9th by same. You may state whether the C. C. & C. Co. or its receiver has had or held or exercised any act of possession of said lands or any part thereof for mining purposes or otherwise since you have been in possession of the same.

247 Ans. 9th. They have not.

Interrogatory 10th by same. If said lease was binding and in operation after the minor children of Pettus Priddy, deceased, arrived at majority, state whether there was due you on the 1st day of January, A. D. 1885, from the C. C. & C. Co. or its receiver any money as advance royalty on their mining lease of said land. If so, how much and for what year or years did it accrue?

Ans. 10th. $80.00, due me for the year 1884.

Interrogatory 11th by same. State whether you demanded payment of the same; if so, of whom you demanded it and whether the demand was oral or in writing.

Ans. 11th. I made a demand of Receiver Harrison on the 1st day of January, A. D. 1885, in writing. Said demand was in the words and figures following, "to wit:"

CARTERVILLE, ILL., *Jan.* 1, 1885.

To John W. Harrison, receiver of the C. C. & C. Co.

SIR: There is now due me for rent or lease money on E. ½ of the S. E. ¼ of sec. 33, township 8, range 1 east, eighty dollars for the

year 1884. I hereby demand payment for the amount due me for said rent as aforesaid, and if payment be not made within ten days from the date of this demand I shall claim a forfeiture in accordance with the terms of the lease heretofore given to A. C. Bryden, pres. of the C. C. & C. Co., by me for the minerals underlying
248 said above-described real estate.

Yours truly, WM. HENDERSON.

Interrogatory 12th by same. Did you deliver this demand to John W. Harrison in person? If not, state what you did with it, and state also whether Joseph Waldron gave you a similar demand and what you did with that also.

Ans. 12th. I enclosed it in an envelope and sealed it and addressed it to John W. Harrison, receiver of the Carbondale Coal & Coke Co., at St. Louis, Mo. I also gave name and number of street, but cannot recollect it now. I paid the postage in full. I mailed it on the 1st day of January, 1885, and the same day Joseph Waldron gave me a like demand for $33.34, with directions to mail the same, which I mailed at the same time. His demand was enclosed in an envelope, stamped and addressed to John W. Harrison, receiver of the C. C. & C. Co., St. Louis, Mo.

Interrogatory 13th by same. You may state whether you have leased the same lands to E. A. Hitchcock; if so, state when you signed said lease and whether it was before or after you received the information that the lease to the C. C. & C. Co. had been adjudged forfeited by the U. S. circuit court and whether it was before
249 or after the decree had been opened and a rehearing granted.

Ans. 13th. I did lease my lands to E. A. Hitchcock. I signed the lease about three days after the forfeiture was rendered, in the month of September, 1885, before I heard of the rehearing of the case.

Interrogatory 14th by same. In the written demand made by you you deserted the lease as given to A. C. Bryden, pres. of the C. C. & C. Co. by me, etc. State whether you ever gave a lease of said lands to any other person than E. A. Hitchcock, and state what lease you referred to in that demand.

Ans. 14th. I never leased to anybody except E. A. Hitchcock. The lease I referred to in my demand was a lease given by Nancy Priddy, guardian of the minor heirs of Pettus Priddy, deceased, to the C. C. & C. Co., dated the 5th day of April, A. D. 1873.

Interrogatory 15th by same. State whether the C. C. & C. Co. or John W. Harrison, their receiver, have paid or offered you any advance royalty since the 31st day of December, A. D. 1884.

Ans. 15th. They have never paid or tendered me any advance royalty since that time.

And further the deponent saith not.

WILLIAM HENDERSON.

And now, at 6 o'clock p. m., May 28th, A. D. 1886, adjourned until to-morrow morning at 7.30 o'clock a. m.

MAY 29TH—7.30 o'clock a. m.

250 Taking of depositions renewed, when DAVID WALDRON, Jr., who was next called, sworn, and examined, testified as follows:

Deposition of David Waldron, Jr.

Interrogatory 1st by counsel for intervening petitioners. State your name, age, occupation, & place of residence.

Ans. 1st. David Waldron, Jr.; age, 28 years; occupation, farmer. I reside about one mile northwest from Carterville, in the Co. of Williamson and State of Ill., on the following-described land, "to wit:" The S. W. ¼ of the N. W. ¼ of sec. 3, township 9 S., range 1 E., of the 3rd P. M.

Interrogatory 2nd by same. How long have you resided at that place?

Ans. 2nd. For the last five years.

Interrogatory 3rd by same. State whether you owned any land during the years A. D. 1882, 1883, and A. D. 1884, and the fore part of A. D. 1885; and, if so, describe it.

Ans. 3rd. Yes; described as follows: Five undivided eight-s of the W. ½ of the N. W. ¼ in sec. 3, in township 9, range 1 east, and five undivided eight-s of the N. E. ¼ of the N. E. ¼ in sec. 4, township 9, range 1 east, in Williamson Co., Ill. I am informed that the same is subject to dower & homestead right of Catharine Waldron, "my mother."

Interrogatory 4th by same. Had the above-described lands been leased for mining purposes to the C. C. & C. Co.? If so, state when and by whom.

251 Ans. 4th. Yes; it was leased about 1873, April 5th; made by Catharine Waldron for herself and guardian of Jacob, Daniel, Martha, Henry, Mary, and Catharine, minor heirs of Henry Waldron, deceased.

Interrogatory 5th by same. State whether on the 1st day of January, A. D. 1885, there was any money due you from the C. C. & C. Co. or its receiver as advance royalty on said lease; if so, state how much and for what years it had accrued.

Ans. 5th. Yes, sir; there was $\frac{5}{18}$ of $305 due me, which had accrued in the years 1882, 1883, and 1884.

Interrogatory 6th by same. You may state who was the owner of the other undivided interest in said lands during those years.

Ans. 6th. Henry Waldron, Catharine Waldron, Jr., an- Catharine Waldron, my mother.

Interrogatory 7th by same. You may state whether you and your mother made a written demand for the payment of the advance royalty due from said C. C. & C. Co. on their lease of said lands, which had accrued during the years A. D. 1882, 1883, & 1884; if so, state about when and of whom such demand was made.

Ans. 7th. Yes; on the 1st day of January, A. D. 1885, myself and mother made a written demand by James M. Washburn, our attorney. He was directed by me to mail the demand to John W.

Harrison, the receiver of the C. C. & C. Co., and also, if he
252 thought proper, to mail demand to Edwin Harrison, a principal stockholder in said Co.

Interrogatory 8th by same. State whether said C. C. & C. Co. or John W. Harrison, its receiver, has paid or offered to pay you any advance royalty since the 1st day of January, A. D. 1885; if so, state when and state where was the last time they paid you any advance royalty.

Ans. 8th. Neither John W. Harrison or the Carbondale Coal & Coke Co. have paid me anything since the 1st day of Jan., 1885. The C. C. & C. Co. paid us for the year 1881 in 1882. H. A. Blossom has told me the money was really for me for my share and shares for the other any time I wanted it.

Interrogatory 9th by same. When was the first time he told you that? Was it before or after the lease was adjudged forfeited by the court?

Ans. 9th. Since that time.

Interrogatory 10th by same. Did Henry Waldron and Catharine Waldron, Jr., have a guardian during the years A. D. 1882, A. D. 1883, & A. D. 1884; if so, who was their guardian?

Ans. 10th. Yes, sir; "Mother," Catharine Waldron.

Interrogatory 11th by same. You may state how long you have resided on the lands leased by your mother & Mary Waldron to the C. C. & C. Co.

Ans. 11th. All my life.

253 Interrogatory 12th by same. Who has had the possession of these lands since they were leased?

Ans. 12th. My mother had possession of all the lands until 1880. Since that I have had possession of 26 acres. My mother continued to hold possession of the balance until Sept. last, since which time I have held possession of 18 more acres; and Israel Waldron took possession of 15 acres off the west side of the N. E. ¼ of the N. E. ¼, in sec. 4, township 9, range 1 E. Mother still continues to hold possession of the remainder.

Interrogatory 13th by same. You may state whether the C. C. & C. Co. or its receiver has had or held or exercised any acts of possession (for mining purposes or otherwise) of said lands or any part of them. If so, state all you know about it.

Ans. 13th. No, sir; they have not.

And farther the deponent saith not.

DAVID WALDRON, JR.

JAMES M. WASHBURN, who was next sworn and examined, testified as follows:

Deposition of James M. Washburn.

Interrogatory 1st by counsel of intervening petitioners. What is your name, age, occupation, and place of residence, and how long have you resided at that place?

Ans. 1st. James M. Washburn; age, 69 years. I am doing some

business as attorney-at-law, and at present county judge of Williamson Co.; am also engaged in farming. I reside on a farm
254 about one mile a little southwest from Carterville, in Williamson Co., Ill., and have resided there for a little over 20 years.

Interrogatory 2nd by same. Are you acquainted with the C. C. & C. Co., and with John W. Harrison, its receiver, and with intervening petitioners?

Ans. 2nd. I am not acquainted with John W. Harrison, the receiver of the C. C. & C. Co. I am somewhat acquainted with the C. C. & C. Co. If I remember correctly, I was one of the original *state* holders in its organization. I am acquainted with some (perhaps a majority) of the intervening petitioners, including William Henderson, Joseph Waldron, Catharine Waldron, David Waldron, Jr., Henry Waldron, and Catharine Waldron, Jr. (now McCree); also with Sarah Priddy and some of her children, and with G. T. Johnson. I was also acquainted with Tinsley Priddy, husband of Sarah Priddy, in his lifetime.

Interrogatory 3rd by same. You may state whether you are one of the attorneys for the intervening petitioners in this suit.

Ans. 3rd. I am.

Interrogatory 4th by same. If you know anything of a demand in writing made by either of the intervening petitioners or by Tinsley Priddy, deceased, in his lifetime, of the C. C. & C. Co. or its receiver, for money du- as advance royalty on mining leases on the 1st day of January, A. D. 1885, state all you know about it.

Ans. 4th. I know something of a demand made by Tinsley Priddy and a demand made by G. T. Johnson and a demand made
255 by Catharine Waldron and David Waldron, Jr. Some time in the early part of the year A. D. 1885 Tinsley Priddy and G. T. Johnson severally and Catharine Waldron and David Waldron jointly employed me to try to collect for them from the C. C. & C. Co. or its receiver, Jno. W. Harrison, the advance royalty which they claimed was due them from said company. T. Priddy claimed $140.00 as due him for the year A. D. 1884 on the lease of 140 acres of land, Johnson claimed $120.00 on the lease of 120 acres accrued for the year 1884, and Catharine and David Waldron, Jr., claimed $315 accrued for the years 1882, 1883, and 1884 on the lease of 105 acres of land, besides interest for vexatious delay of payment. On being informed by me that the only way I knew to coerce payment of these claims (as the property of the Co. was in the hands of a receiver) was to make a demand for the money in writing in order to get the money or a forfeiture of the leases, they directed me to prepare a written demand and send it to the person or persons of whom such demand should be made. Accordingly, about the 2nd day of February, A. D. 1885, I prepared three written demands--one for Priddy, one for Johnson, and one for Catharine & David Waldron, Jr., otherwise David W. Waldron—and sent them by mail in a registered letter addressed to John W. Harrison, St. Louis, Mo. In a few days after I received from the postmaster at Carterville a registry return receipt, which is filed as Exhibit T of intervening petition

of William Henderson and others in this suit. I kept copies
256 of the several written demands, and I now refer to Exhibit T of the intervening petition as a *verbatum et literatim* copy of the demand made by G. T. Johnson & Francis Johnson (his wife), and to Exhibit Q of said petition as a like copy of the demand made by Catharine & D. W. Waldron, and to Exhibit R of said petition as a like copy of the demand made by Tinsley Priddy and Sarah Priddy (his wife). These are all on file in this suit, and are respectively and to the best of my knowledge and belief true copies severally of the three several demands sent by me by mail in a registered letter to John W. Harrison at St. Louis, Mo. I may add that on the same day I sent by registered letter the same or like demands to Edwin W. Hearrison at St. Louis, Mo., and a few days after received from the postmaster at Carterville a registry return receipt, signed Edwin Hearrison, per C. M. Pierce. I sent these demands to Edwin Hearrison because I had been informed that he was a large stockholder and a kind of general sup't of the business of the company.

Interrogatory 5th by same. If you know anything else that would be of advantage to the intervening petitioners you may state it.

Ans. 5th. I do not now recollect of but one other matter, but what is, perhaps, known by others as by myself. After these demands failed to bring the money demanded within the ten days, or, for that matter, at all, G. T. Johnson had more than one conference with
257 me as to what should be done. I advised him that I knew of but one thing that could be done and that was to file a bill in chancery to have the leases adjudged forfeited; that I was satisfied that he could have this done, but that in doing so he might lose the advance royalty then due him. He said that if he could get a forfeiture he would be willing to lose what the company owed him. Some time in May, 1885, he was informed that if himself and Catharine & David Waldron, Joseph Waldron, Wm. Henderson, and the heirs of Tinsley Priddy and one or two others adjoining them would get their leases to the C. C. & C. Co. adjudged forfeited they could lease them on the same terms to a responsible company which would begin working in their coal immediately; he was also advised that as many persons as were in a condition to do so could join in the same petition for a forfeiture. I informed him of the terms on which Mr. Barr and myself would bring this suit in the U. S. circuit court; these terms afterwards — embodied in a contract between Mr. Barr and myself, of the one part, and the intervening petitioners, of the other. The terms seemed very satisfactory to Mr. Johnson; at least, he made no objections to them and had a conference with Joseph Waldron to ascertain whether he would go into the suit. He also, without reward or promise of it, went with me to confer with Catharine Waldron, with Sarah Priddy, and to one Wm. Tally's to confer with him all about bringing this suit to obtain a forfeiture of their leases, and in the event they got the forfeiture to lease their lands again, or if they failed to secure the judg-
258 ment of forfeiture they were assured that the money due would be tendered them. Mr. Johnson took more interest and

seemed more anxious for the forfeiture than any other of the intervening petitioners, except possibly Wm. Henderson. The terms of the contract between Mr. Barr and myself, of one part, and the intervening petitioners, of the other, were stated distinctly by me to Mr. Johnson before we went to see the others. They were again stated by me to Catharine Waldron in the presence of Mr. Johnson. They were, to the best of my recollection, again repeated to David Waldron in his presence and hearing. They were again stated by me to Sarah Priddy and some of her children in the presence of Mr. Johnson, and they were again repeated to Wm. Tally partly by Mr. Johnson and partly by me, all of us being together at Tally's house or near his house, just outside his yard fence, and the result of the conference was that Mr. Barr and myself were employed by the intervening petitioners to bring their suit in the U. S. circuit court, which we did soon after.

And further this deponent saith not.

JAMES M. WASHBURN.

STATE OF ILLINOIS, } ss:
Williamson Co., }

I, R. H. H. Hampton, a notary public in and for said county & State, and also special commissioner appointed by the circuit court of the U. S. for the southern district of Ill. to take testimony for the intervening petitioners, Wm. Henderson and others, in the suit now pending in said court, in which Sam'l M. Dodd *et al.* is complainant and The Carbondale Coal & Coke Co. is the defendant and said Wm. Henderson and others are the intervening petitioners, do
259 hereby certify that on the 26th day of May, A. D. 1886, and continuing from day to day until the 29th day of May, A. D. 1886, inclusive, in accordance with notice hereunto attached, I did take the foregoing depositions of Sarah Priddy; Catharine, Israel, Joseph Waldron, Rob't Winning, Wm. Henderson, David Waldron, Jr., and James M. Washburn, witnesses, whose names are severally subscribed to their foregoing depositions; that previous to the commencement of the examination of each of the witnesses they were severally sworn by me to testify the truth in relation to the matters in controversy between the intervening petitioners and the said C. C. & C. Co., defendants, as well as between said intervening petitioners and Sam'l M. Dodd *et al.*, said complainants, so far as they should be interrogated concerning the same; that the said depositions were taken at my office, in the village of Carterville, Co. of Williamson, State of Ill., on the 26th, 27th, 28th, and 29th days of May, A. D. 1886, and that after said depositions were taken by me as aforesaid the interrogator- and answers thereto, as written down in each, were read over by me in the hearing of the witness- who made the answers, and that thereupon the same were respectively signed and sworn to by the respective and several deponants before me, the said oaths being administered to each of said witnesses by me at the place, on the days and year last aforesaid.

R. H. H. HAMPTON, [SEAL.]
Special Commissioner & Notary Public.

260 STATE OF ILLINOIS, } ss:
Williamson Co., }

In the name of the people of the State of Illinois.

The people of the State of Illinois to William Henderson; Joseph, Catharine, and Israel Waldron, Sarah Priddy, Rob't Winning, and James M. Washburn:

You are hereby severally commanded to appear before me, at my office, in the village of Carterville, in the county & State aforesaid, at 9 o'clock a. m. on the 26th day of May, A. D. 1886, and from day to day thereafter, so long as it shall be necessary, to testify and speak the truth in behalf of Wm. Henderson and others, intervening petitioners in the suit of Sam'l M. Dodd *et al. vs.* The Carbondale Coal & Coke Co., now pending and undetermined in the United States circuit court for the southern district of Ill., at Springfield, Ill.; and this you are not to omit under the penalty of the law.

Given under my hand and seal on this the 21st day of May, A. D. 1886.

R. H. H. HAMPTON, [SEAL.]
Special of *Commissioners of said Court & Notary Public.*

Office of R. H. H. Hampton, in the village of Carterville, in the Co. of Williamson and State of Ill., June 21st, A. D. 1886, at 1 o'clock p. m.

H. A. Blossom, receiver, in person, and appearing by his solicitor, W. T. Allen, and William E. Barr, trustee, appearing by James Taussig, his solicitor, and the Carbondale Coal and Coke Co., appearing by W. J. Allen, its solicitor, having read the depositions
261 of the witnesses examined in this cause, waive cross-examination of the said witnesses, and they state that said depositions may be returned to the court by the notary forthwith. Said depositions are therefore hereby returned without cross-examinations and with the following bill of costs, including the direct examination:

R. H. H. Hampton, special commissioner	$26 97
James Kelly, C. W. C. { 2 85 / 3 80 }	6 15
Rob't Winning, witness fees	4 50
Israel Waldron, witness fees	3 00
Total	$40 12

R. H. H. HAMPTON,
Notary Public & Special Commissioner.

STATE OF ILLINOIS, } ss:
Williamson Co., }

In the name of the people in the State of Illinois.

The people of the State of Ill. to Wm. Henderson; Joseph, Catharine, and Israel Waldron, Sarah Priddy, Rob't Winning, James M. Washburn, and David Waldron, Jr.:

You are hereby severally commanded by me to appear before me in my office, in the village of Carterville, Co. of Williamson and State of Ill., at 1 o'clock p. m. on the 21st day of June, A. D. 1886, and from day to day thereafter as long as shall be necessary, to testify and speak the truth in behalf of William Henderson and other intervening petitioners in the suit of Daniel M. Dodd *et al. vs.* The Carbondale Coal & Coke Co., now pending and undetermined in the U. S. circuit court for the southern district of Ill., at
262 Springfield, Illinois, and this you are not to omit under the penalty of the law.

Given under my hand and seal on this the 14th day of June, A. D. 1886.

R. H. H. HAMPTON,
Special Commissioner & Notary Public.

(Indorsed:) Filed June 5, 1886. J. A. Jones, clerk.
(Also indorsed:) Refiled September 20, 1886. J. A. Jones, clerk.

Depositions on Behalf of Defendants to Intervening Petition of William Henderson et al., Read in Evidence on Hearing of said Petition.

263 In the Circuit Court of the United States for the Southern District of Illinois.

S. M. DODD *et al.*
vs.
CARBONDALE COAL AND COKE COMPANY *et al.*

Testimony taken on the 3rd day of July, 1886, before L. L. Walbridge, special examiner, appointed by the circuit court of the United States for the southern district of Illinois, in the matter of the intervening petition of William Henderson *et al.*, at the office of James Taussig, Esq., No. 509 Olive street, St. Louis, Missouri.

Present: Mr. Barr, of Barr & Washburn, solicitors for William Henderson *et al.*, and James Taussig, Esq., and W. J. Allen, Esq., solicitors for defendants.

G. T. JOHNSON, sworn and examined on behalf of the defendants, testified as follows:

Deposition of G. T. Johnson.

(By Mr. ALLEN:)

Q. State your name, age, residence, and occupation.

A. My name is G. T. Johnson. I reside in Williamson county, Illinois; farmer. I was 56 years old on the 9th of February.

Q. How near do you live to Carterville, Illinois, where the coal and coke company have been mining coal for some years past?

A. I live just one mile and a quarter on a line from the public square.

Q. Are you one of the petitioners engaged in litigation in the circuit court of the United States for the southern district of
264 Illinois in a suit against the receiver of the coal & coke company and others, which litigation looks to the forfeiture of the coal leases? Are you one of those petitioners?

A. I don't know whether I understand that or not.

Q. Are you one of the petitioners in the suit in reference to the coal leases?

A. I guess, if I understand it, I am.

Q. You are one of the petitioners?

A. I am.

Q. With Henderson and others?

A. I don't know about him.

Q. Well, he is one, is he not?

A. Yes, sir.

Q. And Mrs. Waldron?

A. Yes, sir.

Q. You are the George T. Johnson who appears in that litigation as one of the petitioners?

A. Yes, sir.

—. You may state who you employed to commence that litigation and for what purpose the employment was made.

A. I can do that very clearly. About January, I expect it was, when we first commenced it, I first employed Mr. Washburn to see if the company was going to pay—if he could get the money out — the company—what was due me for 1884, and he said he guessed there would be no trouble about it, and I said didn't want to get into any trouble or lawsuit about this matter, and he told me to go around and see Mr. Simpson and find out who was president and all about it, as he wanted to write to the company and the receiver and all, and I went and saw him and he wrote, and then he said he could not collect it. He told me he didn't think there was any chance to collect it. This was along in May, at the term of the circuit court in 1885, he tells me this. He says to me, says he—he always calls me Tom—he says, "Tom, I think the best thing we can do is to get up a petition in the United States court to pay them leases off or declare
265 them null and void leases." Well, I said, "I want my money, but I don't want to get into any trouble in the United States court," and he says, "There is no trouble about the United States court." Well, it went on awhile and I went around and told Mr. Washburn and saw Mr. Waldron and Mrs. Priddy, and there was Mr. Henderson, and we didn't care to go into it at that time. Well, Mr. Washburn didn't decide what he was going to charge us if I went into it. I wanted to know the bill; I always like to know that as we go along.

My means are very limited, anyway; but he finally came to the conclusion that he would get up a petition and he would charge us 10 per cent. if the money was collected. That was the contract between me and Washburn individually; and, if not, if the United States declared my leases null and void, I would give him the privilege of another lease to lease the land to another company, provided the United States declared it null and void, but if the money was paid I was to pay him 10 per cent. on the amount collected; that is about as far as I went. Well, then, there was more about it; they had a kind of a suit got up by the court. I don't know how it was, but Mr. Washburn sent a man around with some new leases to sign, and he sent Mr. Hampton around to sign the new leases.

Q. Who to?

A. He came to me; I don't know whether he came to anybody else or not; I am speaking for myself.

Q. Who were the leases to?

A. Well, I don't know, because I didn't learn that. I don't believe I could state that at all; but says I, "I shall sign no new lease, Mr. Hampton, until I am certain the United States court de-
266 clares my old lease null and void," and I says, "I don't want to get myself into any trouble about this," and he says, "It is all right." Well, I didn't sign it; so I never read the lease. I gave it to my two sons, who do all my reading and writing, and my wife, and I just put him off and didn't sign the lease at all. Well, about a week after I saw Mr. Washburn, and he says, "What are you going to do about these new leasess?" and says I, "Nothing at all;" says I, "I have got my money that is due me, and that is all I want," and says he, "That is not what I thought you said;" and I said, "That is what I said;" and says I, "I was to have my money and if I could not get my money," says I, "I wanted to know it," and that is about all the conversation.

Q. You may state whether you have got your money from the receiver of the coal and coke company, this money for which you commenced suit.

A. I have every dollar, every cent. Now, if you will permit me to tell about it I will. There was another company wanted to lease the land; I wish you to understand that as we go along. Of course, if I had got out of this I would have leased it if it had been declared null and void, but I got my money.

Q. Did you authorize any one, as far as you are concerned, to have the lease declared forfeited or that it should be prosecuted any further?

A. Not on my part.

Q. Having got your money, you are satisfied?

A. That is all I wanted and that is all I employed Mr. Washburn to do in the first place.

Q. Can you read or write?

A. No, sir; I cannot, unfortunately.

267 Q. Well, you may state as a matter of fact at whose request you came here to have your deposition taken.

A. At Mr. Blossom's request.

Q. He is the receiver?
A. Yes; I suppose he is. I came at Mr. Blossom's request.
Q. Do they pay your expenses?
A. Yes, sir.
Q. You may state whether at any time before this litigation of which you have been speaking you have had occasion to bring suit against the Carbondale Coal & Coke Company for rent due on the lease involved in this controversy.
A. Yes; I commenced suit against them once.
Q. In what court?
A. It was before a magistrate; I believe Squire Morse, in our district.
Q. Did you get judgment?
A. No; they paid it off.
Q. When was that?
A. I believe it was, as well as I recollect, for the royalty due in 1877. It had a run over a year.
Q. Did you have a lawyer?
A. Yes; Mr. Washburn.
Q. The same gentleman who is mentioned before in this litigation?
A. Yes, sir.

Cross-examination waived.

Signature waived.

268 H. A. BLOSSOM, sworn and examined on the part of the defendant, testified as follows:

Deposition of H. A. Blossom.

(By Mr. TAUSSIG:)

Q. State your name and occupation.
—. My name is H. A. Blossom; I am at present receiver of the Carbondale Coal & Coke Company.
Q. How long have you occupied that position?
A. Since the 15th of February, 1886.
Q. Were you connected with it in any manner before that time?
A. From October, 1884, until April 18, 1885, I was secretary and acting manager to the receiver; from April 15, 1885, until February 15, 1886, I was general manager for the receiver. The receiver was then John W. Harrison.
Q. So that from February, 1886, you have substantially had the management of the receiver's affairs of this concern?
A. I may say from the beginning I have had substantially charge of it since October, 1884.
Q. Have you become familiar with the lands owned and controlled by the corporation?
A. Yes, sir.
Q. Particularly the coal lands?
A. Yes, sir.

Q. Now, I wish you to tell what you know of the condition and the value of the leased lands which are in controversy in this case of the intervening petition of the Hendersons.

A. By condition do you mean the tena-cy?

Q. The location; I don't care for the tena-cy, but the location and relation to other possessions of the corporation.

A. The company had at the time of the receivership leases from Joseph Waldron, Catherine Waldron, William Tully's heirs, Tinsley Priddy, George T. Johnson, William Henderson, David
269 Waldron, Hiram Carter, W. E. Sizemore, Elijah Peterson, George K. McDonald, H. W. Walker, and Henry Phillips. They were also operating when the receiver took possession of the leased lands, the lands of Laban Carter. I think I have mentioned all the names of the leases. All of these leases are still in the possession and control of the receiver, with the exception of Joseph Waldron, William Henderson, and Catharine Waldron, and the heirs of Tinsley Priddy and George T. Johnson have begun a proceeding to set aside the leases given by them respectively, and since the proceeding was begun George T. Johnson has accepted all of his royalty due him, and I may say, therefore, we are in undisputed possession of that part; also the lands which I have mentioned, with the exception of Laban Carter and Peterson, and which are substantially in one group; they lie west of the present workings of the company some three-quarters of a mile, the nearest one being that of W. E. Sizemore. That is as near as I can recollect, and the company has not worked any of those lands. It is very hard to determine what the value of the property is until after it is examimed by mining into it, but, assuming that the coal there is of equal value with that which we are mining off of the Carterville lands, I consider that the leases of Catherine Waldron and Joseph Waldron, Priddy, and Henderson are equal to all of the others if not greater.

Q. When you say "all the others" what do you embrace in that?

A. I mean all, Joseph Sizemore, Parham Carter, Peterson, Walker, and D. Waldron.

Q. Are you familiar with the value of the whole estate of
270 the corporation embracing these leases in controversy?

A. Yes, sir.

Q. What would be the effect of the forfeiture of those leases upon the whole value of the estate in your charge?

A. The effect of it would be, in my judgment, to reduce the value one-half or more.

Q. What effect would the forfeiture of the leases have upon the chances or prospects of the realization of the debt of the corporation represented by its bonds and the receiver's certificates issued up to the present time?

—. The prospects of realizing if those leases were cancelled would be very limited, and my reason for that opinion is that the opportunities for working those lands would give so much greater advantage to the parties operating them that it would be almost impossible for another company to operate the remaining lands in compe-

tition with that company by reason of the natural advantage which this property has for ready access to the railway.

Q. Now, please state a little more particularly in what these natural advantages consist.

—. The railway running out of Carterville runs at a slight grade, and after leaving the top of the hill there is a natural depression in the surface of the land which would give a very convenient switch to the mines to be operated on the Waldron property, so that cars would gravitate down directly to the Carbondale & Shawneetown road without requiring any assistance or power to move them.

271 Q. How would the coal on the leased lands in controversy here be worked or mined. Would it be or could it be mined by direct drifting from what is known at the Dodd shaft on the present workings of the company or otherwise?

A. No, sir; that would be impossible. It would be necessary to sink a new opening in order to get out the coal.

Q. When you say that it would be impossible do you refer to the running of direct drifts from the old shaft?

A. I refer to running direct drifts from the old shaft; yes, sir.

Q. Why would that be impossible?

A. Because of the distance—because of the depression between the old workings and the ones in controversy, where we have every reason to believe, from all the information that we can get, that there is no roof to sustain the passage-ways through, for the reason that we would be working against the natural dip of the coal, so far as we have investigated it, making a draft all the way from the coal up to our present opening in the Dodd shaft.

Q. When you say it would be impossible you do not mean to say it would be physically impossible with an unlimited expenditure of money, do you?

A. I do not mean to say that an unlimited expenditure of money would not produce a roadway through there; but it would be, in a financial sense, physically impossible.

Q. It could not be made a profitable operation, could it?

A. It could not be made profitable.

Q. Now, in what manner could or would the leased lands embraced in this controversy be made available?

272 A. By the opening of a shaft on the Waldron property in such a location as the bore-holes would show was best adapted for the sinking of a shaft, which would be somewhere on the side of the hill high enough up so that the cars would run straight down onto the railway.

Q. When you say "from somewhere on the hill" do you mean upon the crest of the hill?

A. Not on the top of the hill directly, but on the side of the hill.

Q. I wish to ask you whether, in the course of your administration of this property as receiver, you have made the subject of mining coal and coal lands a matter of investigation, and whether you have accurate familiarity and knowledge on that subject.

A. I have sought to acquire full information of our property; in-

cidentally others, such as I was able to investigate with a view to improving ours.

Q. You have read the deposition of Mr. Robert Winning in this case, have you?

A. Yes, sir.

Q. And you have noticed his estimate of the probable yield of coal of the lands of this company, have you?

A. Yes, sir.

Q. And the period of time for which he estimates the lands would be sufficient to yield enough to pay the company?

A. Yes, sir.

Q. I wish you to state what you can in relation to that from the experience you have got.

A. My experience with these mines is that if there were no elements of chance as to what might be discovered in opening a
273 mine, and if there were none of the contingencies which happen in those mines so that every pound of coal could be gotten out and used commercially, Mr. Winning's statement would *be* probably be correct, but there are numerous difficulties in the way.

Q. Contingencies?

A. Numerous difficulties in the way which we have discovered and which may turn up in the same field again.

Q. Enumerate them more particularly, if you please.

A. There is the lack of a roof, the lack of a good bottom at times, faults in the coal, horsebacks, splits, and the natural fall of the coal away from the bottom of your shaft, sometimes in waves, sometimes in a steady depression running back.

Q. A dip?

A. A steady dip.

Q. Now, will you be a little more particular in explaining the technical terms you have used here, such as "horsebacks," "faults," "splits," etc.?

A. When we come to a place where the roof is bad we mean by that that there is nothing solid above the coal sufficient to bear the weight of the surface roof above that, or else that it is of such poor quality that it will not stand to be propped. The props don't break, but the whole thing comes down and makes it dangerous for anybody to work in there—dangerous for the miners. We have such a case as that in the Mary Only lands, which the company used to lease and which they were forced to abandon by reason of there being no roof on them. I think there was 100 acres, or something like that, and the coal in that direction is understood to run out—to give out—in the bore-holes—that is, it don't show the same thick-
274 ness of vein of coal, and in some places none at all. By "faults" we understand such depressions in the roof of the coal by reason of stone or some other foreign substance running in that washes the coal out from the top; that the roof, instead of being level, will come down. By "horsebacks" we understand such a rise in the land as will run the coal out, and it requires more expense to place it and keep it out of the way even if both "horsebacks" and "faults"

don't seriously interfere with the coal on either side in the shape, as we find it, of bunches of sulphur and other foreign matter. It renders the coal unmarketable, such as this is claimed to be, and to send it out would be detrimental to the general interest of the mine; and by "splits" we mean the running in of slate between the top of the vein and the bottom of the vein.

Q. Is it practicable to determine by calculation the quantity of coal which an acre of coal land will yield merely from the borings which are made ordinarily for the purpose of ascertaining whether the land in question is coal land or not?

A. No, sir; there is no way to determine accurately.

Q. What is the nature of these borings? How are they made?

A. All these borings that I know about, I might say, have been made with an ordinary auger, which goes down through, and by taking up the particles which are chipped off, as, for instance, stone, slate, or coal, approximately you can determine the thickness of each strata or roof of mineral as you go through it, but you can't closely determine the quantity of the coal you find, nor can you be certain that what you find at this particular place will follow through the entire land on which you are boring.

275 Q. Is there any safe way known to you for the determination of the quantity of coal contained in a certain territory other than the actual operation of mining and taking out of the coal?

A. Not that I know of. It is largely a matter of chance; recorded instances of that in the geological report.

Q. What geological reports do you refer to?

A. More particularly to the Illinois State geological report.

Q. I wish you to state why the rents or royalties claimed in this proceeding were not paid.

A. The subject of the payment of these rents and royalties came up shortly after the first of January, 1885, during Mr. Harrison's administration, and was immediately referred to his solicitor, Mr. Allen, who advised him that it was not necessary for him to pay those at once; that there were some differences of opinion in respect to certain of the titles, and that he would not be safe to pay the money until he had an order of the court, and that he looked upon it as being an or rather, perhaps, an extraordinary claim against the receiver, which these parties should present to the court, setting forth the facts and getting an order instructing them to pay the money.

Q. What was, if you know or have heard, the matter discussed by the receiver's solicitor—what was the nature of the difficulty as to the title?

A. The difficulties were with respect largely to the Waldron lands, those of Catherine Waldron and the Tully heirs and Henderson—well, not particularly with respect to Henderson, because we

276 had discovered he had made his title good by several suits against the company in previous years; but as to Mr. Johnson we were under the impression there was a mortgage of record—were so told by parties at Carterville—and generally that the title

had got to be definitely arrived at, so that an order might be made by the master which would determine who was to receive the money and save the receiver from paying a second time.

Q. Well, what was the advice that Judge Allen, as solicitor, gave to the receiver?

A. His advice was not to do anything about it; not to pay them, but let these people go in and get the necessary orders, and then he would be safe.

Q. You have read the depositions taken in this case on behalf of the petitioners in relation to the statements made by you to David Waldron, have you?

A. Yes, sir; son of Catherine Waldron.

Q. To the effect, substantially, that money was ready for him whenever he wanted it?

A. Yes, sir.

Q. Now, please state what the conversation was and what you did in regard to it.

A. I met David Waldron at the office of the company, and I called him in and spoke to him in respect to these leases of his mother, and had quite a conversation with him, in which I said to him that we had great difficulty in determining who owned the Waldron lands and in fact most of the other lands, and that if they would simply come forward and prove their respective interests so that we could pay the money without fear of being required to pay a second
277 time for it we could get an order of the court or he could get an order of the court to receive it, and that the receiver in his answer had expressly stated that he desired to pay this money when he ascertained who was entitled to receive it. In the talk to David I asked him if he could tell me if he knew who owned the lands, and, having my note book with me, I made a memorandum of what he had to say about it. He was unable to determine himself exactly who owned the lands, but as near as we could arrive at it from his statements he said Catherine Waldron at that time (this was along in the spring of 1866, either in February or March)—that Catherine Waldron owned a life estate in 44½ acres; that Jacob Waldron was deceased, but was entitled to 13½ acres at the time of his death; that Israel was entitled to 13½ acres; that David was entitled to 28 (that was the party I was talking to), and Henry to 13½. I called his attention to the fact that that made 113 acres, when they only claimed to own 105, and he said in substance that he could not tell me exactly how the matter stood, but he thought that was about the way it stood. He said that Emma Morgan, his sister, Catherine McCree, his sister, had sold to their mother, and that Martha Mangle, another sister, had sold to David Waldron—that is, off the same property I was talking about; that accounted for his having 28 acres and his two brothers having but 13½ acres. Well, the conversation then turned to the date of these deeds, and he said the deeds, some of them, were dated quite a way back, and I said, "How am I going to tell how much you were entitled to for the year 1882," and so on for the years 1883 and 1884—that is, when these changes took effect—
278 and whether the rents were carried with them; and, if so, in what proportions and what the general distribution.

I said substantially (this conversation is substantially what occurred) further that I did not see how I could find out how much each party was entitled to, and that if he could find out there was no trouble for him to get the money; that I paid the money into court, and that it was standing there ready for the different parties to claim their interest. He intimated to me that so far as he was concerned he would be perfectly satisfied to take his money, but that it was a matter of pride with him not to do anything in that direction unless his mother would sell; that they were together embarked in this matter as a joint affair, and, of course, as his mother would not agree to it, that he would not like to, but that so far as he was concerned he would just as lief we would have the leases if we had the money as to see them cancelled. He agreed, after I had talked with him, that my position to determine how much he was entitled to or anybody else until the deeds were put on record—he said that he did not know whether they were all on record or not, but he was sure they had them all; that my position to determine would be, of course, very difficult—not exactly in this language, you understand, but that is the substance of it.

Q. The corporation has not worked these lands for coal, has it?

A. No, sir.

Q. Has there ever been any change in the relation and position by the corporation of these lands under its leases since the beginning of the year 1885?

A. None whatever.

279 Q. Please state how and to what extent the corporation controlled these lands from the time of your charge and whether there has been any change in that respect since.

A. All that property which this company leases is under somewhere from 35 to 90 feet, and there has never been any opening made in it; the tenancy or occupation of it by the company has been constructive from the time the leases begun up to the present time, and could be nothing else.

Q. What is the character of the leases and the actual fact as to the control of the surface?

A. As to controlling openings into the coal, the company is entitled to use so much of the surface as it needs for building.

Q. I merely want the facts in the provisions of the leases. What are the facts as to control of the surface?

A. As to the control of the surface, we have no control over it whatever unless we go there to mine.

Q. Can you tell approximately or accurately the amount of rental in the shape of royalty which has been paid by the corporation on these leases since they have been made?

By Mr. BARR: The owners of these lands, the lessors, control and have in possession the surface of the land.

WITNESS: I have so stated. The records of the company show that Catherine Waldron has received in money $839.30, and the rentals for 1882, 1883, and 1884 was paid into the court by me. William Henderson, I get from the same source, has received $880. The rental for 1884 was paid into the court. Tinsley Priddy re-

ceived $1,540. The rental for 1884 has been paid into court.
280 The heirs of Thomas Waldron, which is the property claimed by Joseph Waldron in this controversy, have received $440. The rental for 1884 was paid to the court. Mr. Joseph Waldron has received $1,540. That is up to and including 1885, and the rentals due on these other leases for the year 1885 have also been paid into court.

Q. State what you know, if anything, concerning the intentions of your predecessor, Mr. Harrison, as receiver, to operate these properties in dispute here for the purpose of extracting coal.

A. It was Mr. Harrison's intention——

Q. That was when?

A. That was shortly after his taking possession, when he had an opportunity to go and see the property to open a new mine on the Waldron land in order that he might have a modern mine, with all the modern improvements of hoisting and machinery, and that he might be able to get out somewhere in the neighborhood of 300,000 tons per annum, which was what we calculated was necessary or very desirable, rather, to do in order to make the property pay any sort of reasonable profit on the amount of money they had in it—that is to say, on the mortgage indebtedness. Mr. Harrison was opposed at all times to the expenditure of any money on the present works in the way of betterments or modernizing them, for the reason that he desired to save all the money we got in and to save all the expenses on his old plant and allow it to the new one, and give the new one the benefits of all that we had in the way of operating and improving the mine.

Q. Was there any intention to make application to the court for leave to incur such an expenditure?

281 A. Mr. Harrison and I, I think, in the month of May, last year, shortly after he came back from Denver, considered seriously the question of going to the court and asking for authority to expend fifteen or twenty thousand dollars in the opening of the new mine, but for some reason or other he did not do it and it run along for a little while longer, and before he got around to it again these gentlemen had begun their suit.

Q. Do you know anything as to the practice, in the cases of the parties claiming to be the owners of these disputed leaseholds, as to their method in collecting the rents from the company in reference to delays?

A. Yes, sir.

Q. What do you know about that?

A. The company by agreement or, I presume, by arrangement used to allow these lessors to buy goods at the store to be applied on their accounts for rental or royalty—the same thing—allowing them to take out (in the last of it; before that it was a little different—they took all they wanted); but the last year or so they were only allowed to take out a *pro rata* by the month, and some of these parties, notably the heirs of Thomas Waldron, took their accounts out of the store almost entirely. Some of the Tully heirs took theirs out. Catherine Waldron was apparently never in any hurry. She

allowed it to run along for a year or two at a time without pressing the subject. William Henderson, for the royalty of 1882 and 1883, sued the company and got his money, and the same way with Tinsley Priddy, and, if I am not mistaken, Tinsley Priddy sued the company in 1882 and 1883 and collected his money in that way. After they sued they came up and we paid.

282 Q. Do you know what, if anything, led these claimants to pursue a different course by the prosecution of this suit?

A. I do not know anything definitely. All I have heard has been rumors and reports brought to me by different parties that the ore & steel company were going to take the lands if they could get rid of these leases.

Counsel for intervenor objected as hearsay.

WITNESS: A Mr. Simpson, who was formerly in the employ of Mr. Harrison there as a sort of local manager, had said he had been asked to resign, and he had come back from Williamson county and would be there——

Counsel for the intervenor objected.

WITNESS (continuing): And Wm. Henderson said at first all he wanted was his money, and that if he could not get his money, the cancellation of the lease, and the same way with Mr. Johnson, and afterwards they turned right around the other way and they wanted the cancellation of the leases, and if they could not get that they wanted their money.

Q. Have you received any information from any of these claimants as to the effort of this or any other company to control these lands?

A. Not from any of these claimants, except that they have stated—David Waldron stated, I think, to me that he understood there was another company ready to take possession and open up at ance.

Q. Has the Crystal Plate Glass Company been mentioned in that connection?

A. I never heard it mentioned except by Judge Allen.

283 The Crystal Plate Glass Company was not known down there in this matter. It — generally understood as being the ore & steel campany—that is, they were in the mining business, and one Mr. Simpson was their superintendent and the other Mr. Simpson, who worked at Harrison, was his brother, and he claimed to know a good deal of these leases by reason of his position.

Q. What are the relations of the St. Louis Ore & Steel Company and the Crystal Plate Glass Company to the Carbondale Coal & Coke Company, as far as the prosecution of the mining of coal is concerned?

A. The St. Louis Ore & Steel Company is the competitor of the Carbondale Coal & Coke Company, and, while perhaps they have conducted their opposition as entirely a business matter, I have sometimes thought that friendly competition hardly would go as far as their acts have gone.

Q. What would be the effect on the property of the Carbondale

Coal & Coke Company and its prospects if either of these companies were to obtain control of the lands leased in dispute there?

A. It would be disastrous; disastrous in respect to the fact that they could operate their property more cheaply than the successors of the Carbondale Coal & Coke Company could possibly hope to.

Q. Do you know Mr. Hitchcock?

A. Yes, sir.

Q. What are his relations to the ore & steel company?

A. He is the present receiver of the St. Louis Ore & Steel Company.

—. What were his relations to the ore & steel company before it passed into his hands as receiver?

284 A. He was president.

Q. What are Mr. Hitchcock's relations to the Crystal Plate Glass Company?

A. He is president.

Q. What, if any, use could the Crystal Plate Glass Company make of those lands if it controlled the different mining properties?

A. None that I know of, except to come in competition with our trade for the railroad. Mr. Hitchcock has stated to me the coal was not valuable for his purposes. We frequently brought some over to him for his purposes, at Crystal City, on the theory expressed in the report of Messrs. Potter and Riggs as to its qualities for gas purposes, and I sold him a barge-load some time in the spring, and I was very anxious to find whether it was satisfactory and I went to see him, and he said, no, it was not satisfactory at the price, and he could not use it, or something of the sort.

Q. What business does the Crystal Plate Glass Company carry on and where?

A. They manufacture plate glass at Crystal City.

Q. In what State?

A. In Missouri. I wish to say in respect to this same matter that I have a contract with the ore & steel company to deliver them a minimum of 30,000 and a maximum of 10,000 tons during the season, the idea being given to me if the coal was satisfactory it would go to the Crystal Plate Glass Company, and I have furnished them of that about, if I remember rightly, 900 tons. That was after the contract was made. Since then there has been no request or

285 intimation to furnish any more, and I do not know whether the contract stands or not. I had a talk with Mr. Garrison, and I said, "I suppose you know my miners have demanded a higher price, and that voids the contract," and he said to me, I would have to "get him out on a strike," or words to that effect. At any rate, there has been no application for any more coal.

Q. When you say that you wanted do you mean yourself individually?

A. I mean as receiver of the Carbondale Coal & Coke Company.

—. Who were the officers of the Carbondale Coal & Coke Company in January and February, 1885?

A. A. C. Bryden was president and J. C. Bryden was secretary.

Q. Where was their place of business?

A. Mr. Bryden lived at Carbondale; J. C. Bryden lived at Carbondale, where the records of the company were kept, and Mr. A. C. Bryden moved down there and moved away again, but whether before or after the first of January I don't know. He came back to St. Louis. He moved there shortly after the failure of this company.

Q. Did the company have a place of business at Carbondale in 1885?

A. Well, I can't say as to that; I think Mr. Bryden kept the records in the office of W. J. Allen down there, who was solicitor of the company; as to that I can't say; but the records were in his office at one time shortly afterwards.

Q. Have any of the petitioners in this intervening petition except the petitioner Johnson received at any time during the administration of the estate by the receivers, Mr. Harrison and yourself, any rent from the receivers for the disputed leases?

286 A. Not for the disputed leases; but Sarah Priddy, one of the claimants in these leases, has received rent for another tract of ground in which she has an interest as heir of William Tully, deceased.

Q. But that is an interest which is not in dispute in this case?

A. That is an interest which is not in dispute in this case.

Q. As to the interests which are in dispute in this case, I understand you to say the receivers have paid no rent, either before or since the institution of this suit to the petitioners?

A. No, sir.

Q. Who represented the receivers at Carbondale and at the mines during the fall of 1884, if anybody?

A. At Carterville Mr. Dundas Simpson had charge, with the title of division superintendent, until, I think, April 1st, 1885, and at Carbondale Mr. J. C. Bryden had charge, also with the same title—that is, at Harrison, also the same title—but he lived at Carbondale all the time. I don't remember exactly the date Mr. J. C. Bryden retired from the service of the receivership.

Q. Were the works of the corporation operated from the time of the receivership, in 1884, to the present time?

A. Yes, sir.

Q. Has the receiver always had his employés in charge of the different parts of the works?

A. Yes, sir; when Mr. Simpson was not there Mr. Trigonning took his place.

Q. Has Mr. Harrison and you as his representative during the continuance of his receivership, and have you since you have been receiver, been in attendance at Carbondale and Carterville often?

287 A. I suppose I have been there on an average of three times a month every month since December, 1884, and sometimes oftener.

Q. Have the places of business and the offices of the receiver been well known and a matter of notoriety in that neighborhood?

A. Yes, sir.

Q. Where did the receiver pay these pay-rolls?

A. The pay-rolls were paid at what is known as the office. It is on the line of the switch from Carterville station up to the Dodd shaft and almost immediately opposite the slope trestle.

Q. I wish you to state whether the place of the office of the receiver was a matter of notoriety?

A. A matter well known down there; never changed since first established.

Q. Was there ever a period of time from October, 1884, to the present time when the receiver did not have parties or representatives or employes or superintendents in charge of the place of business of the corporation?

A. I do not think there has been, excepting Sundays—24 hours—at any time when there was not a superintendent of the division in charge there.

Q. Did these petitioners know you and Mr. Harrison personally?

A. I can't say that. Catherine Waldron knew me and her son David knew me very well, and I think he knew Mr. Harrison. I can't say that they do. Tinsley Priddy knew me and — son Bert, who is one of the co-heirs, knew me; Joseph Waldron knew me very well, and so did William Henderson. I don't believe I ever saw Mr. Johnson until after the settlement.

Cross-examination waived.

Signature waived.

288 *Deposition of Wm. J. Allen.*

WM. J. ALLEN, sworn and examined by the defendant, testified as follows:

(By Mr. TAUSSIG:)

Q. State your name, residence, and occupation.

A. My name is William J. Allen. I am a lawyer. I reside at Carbondale, Illinois.

Q. What relations have you had to the property of the Carbondale Coal & Coke Company?

A. I have been attorney for the corporation several years—I do not recollect how long—and of the receiver and all of his appointments.

Q. I will ask you to state whether the subject-matter of the payment of the rental to the petitioners in this case was brought to your notice by the receiver; and, if so, what took place.

A. It was, and discussed in several conversations which I had with the receiver and with Mr. Blossom, who was in the office and acting frequently for the receiver as his general superintendent.

Q. Please state what you found to be the condition of things and what, if anything, you advised in relation to the matter.

A. I had some general knowledge, no great knowledge, but some general knowledge and information as the state of the title on the part of these claimants or petitioners.

Q. How came you to have this general knowledge?

A. I had heard in reference to it that there had been suits in court, in Williamson circuit court, for royalty or rent, and I had heard considerable about it in various ways.

Q. You reside at Carbondale, where these parties lived?

A. Yes; it is 8 miles from Carterville, where the mining is carried on. I am sure I said to the receiver and to Mr. Blossom that
289 I did not think it safe for them to pay these rents or claims for royalty without an order from the United States circuit court; that it was doubtful who were entitled, what parties were entitled, to the rent, in whom the title was to the lands leased, and I thought their only safe course was to require these claimants to get an order from the circuit judge, and that that would be a complete protection to them.

Q. What was your instruction and advice generally, Judge, as to the payment of moneys by the receiver?

A. I think—I am satisfied that I told the receiver on several occasions that in view of what I knew to be the large number of interested parties in the property that the only safe course was to require in every instance an order of court for the payment of the money, and I may say, with reference to the trustees who were mining property where foreclosures were threatened, I advised and they obtained in almost every instance, as far as I know, an order of the court to pay over the money, and I advised it in every instance as the only safe course that they could pursue.

Q. When did the subject-matter of the execution of leases by the petitioners here to E. A. Hitchcock first come to your notice, if you remember?

A. I think I heard of the fact between the dates when the decree declared the leases forfeited passed and the date when that decree was set aside. I think so. Those two dates I don't recollect, but I may say that, having heard of it, I went to the record at Marion, Williamson county, and ascertained that several leases of that character to Mr. Hitchcock had been recorded.

290 Q. And you found them?

A. Yes, sir.

Q. Had you received any information from Mr. Hitchcock or from any of the parties in interest here as to whom Mr. Hitchcock represented or represents in obtaining those leases or from whom he took those leases?

A. I have never held any conversation with Mr. Hitchcock on the subject. I only know him by sight.

Q. Have you had any information on that subject from the petitioners in this case or from their counsel, or have you heard any declarations in relation to that matter made by either?

A. I have talked with some of the petitioners—young Mr. Waldron on one or two occasions at Carterville. I have had some conversation with Mr. Johnson; possibly others of the petitioners. I recollect Mr. Waldron told me at Carterville on one occasion that he had leased (he didn't speak accurately, as it turned out)—that he had already leased his land to another company, and perhaps

other petitioners have told me they had leased their lands to another company. Whether they gave the name of the company to me, I am not sure. I heard during the argument of the exceptions before Judge Treat—exceptions to the answer filed by the receiver to these petitioners' bill—I think I heard it stated there, when it was questioned as to how soon these men would be able to get their royalty by working their leaseholds, that the Crystal Plate Company were prepared to commence operations at once at an early date there, and that they could get their royalty by their mines being operated on the lease, and my recollection is, when I asked what com-
291 pany it was that proposed to do so, that Mr. Barr stated, or some one—my recollection is Mr. Barr stated in the argument—that the Crystal Plate Glass Company were willing or ready, as he understood, to take a lease and work the coal lands at once. I may have heard other parties state the same thing, but I do not recollect. I have got the impression from a variety of sources, but not from Mr. Hitchcock, because I never talked with him.

Q. Do you know anything else that is material or pertinent to the issues in this case that I have not asked of you specifically?

A. I can't say. I don't know now that I do without reflection. I have not thought about it.

Cross-examination waived.
Signature waived.
This closed the testimony in the case.

I certify that the foregoing is a true and faithful transcript of my short-hand notes of the testimony of G. T. Johnson, H. M. Blossom, and Wm. J. Allen taken by me at the office of James Taussig, Esq., No. 509 Olive street, St. Louis, Missouri, on the third day of July, 1886.

In testimony whereof I have hereunto set my hand this 7th day of July, 1886.

L. L. WALBRIDGE,
Special Examiner.

(Endorsed:) Filed July 10, 1886. J. A. Jones, clerk.

292 In the Circuit Court of the United States for the Southern District of Illinois.

S. M. DODD *et al.*
vs.
CARBONDALE COAL AND COKE COMPANY *et al.*

In the matter of the intervening petition of William Henderson *et al.*

Take notice that by order of said court depositions of witnesses on behalf of the defendants will be taken at my office, at Carbondale, Illinois, on Friday, the second day of July, to be read in evidence

in said cause, when and where you may be present, if you see proper to do so.

ISAAC H. CALDWELL.
Commissioner, &c.

To Messrs. Barr & Washburn, Carbondale, Ill., solicitors for Wm. Henderson & others, intervenors.

293 UNITED STATES OF AMERICA, } ss.
Southern District of Illinois, }

Be it remembered that on this 2nd day of July, A. D. 1886, I, Isaac H. Caldwell, a commissioner of the circuit court of the United States for the southern district of Illinois, duly commissioned and qualified as such, did in pursuance to the notices hereto attached, cause to come before me, at my office, in Carbondale, in the said district and State of Illinois, and between the hours of 8 a. m. and 6 p. m. of said day, the following persons, William H. Warder and Walter Tregoning, to be examined as witnesses in a cause pending in the circuit court of the United States in and for the southern district of Illinois, wherein S. M. Dodd *et al.* are defendants and William Henderson and others are intervening petitioners, on behalf of the defendants.

Appearances: For the Carbondale Coal and Coke Company and the other defendants, James Taussig, Esq.; for the intervening petitioners, W. W. Barr and Mr. Washburn.

294 It is agreed that these depositions be taken in short-hand and certified by Mr. Caldwell, U. S. commissioner, and the signatures of witnesses be waived.

And the said WILLIAM H. WARDER, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Deposition of Wm. H. Warder.

Direct examination by Mr. TAUSSIG:

1 Q. What is your full name?
A. William H. Warder.
2 Q. Where do you reside?
A. Marion, Williamson county, Illinois.
3 Q. What is your occupation?
A. Attorney and abstracter.
4 Q. Have you any knowledge of title of lands in Williamson county, Illinois, claimed by William Henderson and others, the petitioners in this case?

Counsel for intervening petitioners objects.

A. I have a set of abstracts of titles compiled from the records of Williamson county and from them have prepared abstracts of title to the lands mentioned in the petition, as I understand.

5 Q. Have you done so lately?

A. Recently; within the last week.

6 Q. At whose request?

295 A. At the request of Mr. Blossom, receiver.

7 Q. And of anybody else?

A. And of Mr. Taussig, attorney.

8 Q. As attorney for the trustee?

A. Yes, sir; at Mr. Taussig's request. I didn't understand you were acting as attorney for a different party from the receiver.

9 Q. I will ask you to state whether you have made an examination of the title to the east half of the southeast quarter of section 33, township 8 south, range one east.

A. I have.

10 Q. Have you made an abstract of the title to that tract of land?

A. I have.

11 Q. I show you a paper marked "No. 109" and I ask you whether that is the abstract made by you of that tract of land.

A. It is.

12 Q. Now, please state in whom, according to the records examined by you, the title to that tract of land stood vested on the first of January, 1885, and from that time on to the time of your examination.

Counsel for intervening petitioners objects.

A. I find from my examination of the records and of this abstract prepared by me that the title to said tract of land on the first

296 day of January, 1885, was probably vested in William Henderson; that one Pettus Priddy died seized in fee of said land prior to 1873, and that certain parties have since made conveyances of certain interests in that land, the interest and the right by which they conveyed not being in all cases disclosed by the deeds. I find a deed from Paulina Schaeffer and Rhoda Colp conveying an undivided two-fifths, but not stating by what right grantors convey, and other deeds from other parties conveying certain interests, none of which deeds disclose by what right, whether as liens or otherwise, parties convey; so that it is a matter of doubt, as far as the records show, who is, or whether William Henderson owns the fee simple. I think that is all. It would require outside testimony to satisfactorily establish the fact of what title is held by him; I mean outside the record.

Counsel for intervening petitioners objects to the answer.

Mr. TAUSSIG: We offer this abstract identified by Mr. Ward, "No. 109," as an exhibit.

Counsel for intervening petitioners objects.

The commissioner marked the paper Exhibit A and it is hereto attached.

297 13 Q. Have you examined the title to the southwest quarter of the southeast quarter of section 33, township 8, in the

same range, containing 40 acres, and in the petition in this case claimed by Joseph Waldron?

A. I have.

14 Q. I show you an abstract marked "No. 108" and I ask you to state what it is.

A. This is an abstract of title prepared by me to said land above described.

15 Q. Is it correct, to the best of your knowledge?

A. And is correct, to the best of my knowledge.

16 Q. I will ask you to state in whom you find the title to that tract of land, according to the records, to have been vested between the first of January, 1885, and the first of March, 1885.

A. I find the title to said piece of land on the first of January, 1885, as shown by the records, to have been vested in Thomas Waldron, and the record showed the same state of title up to March, 1885.

17 Q. The first of March, 1885?

A. The first of March, 1885.

18 Q. When did Thomas Waldron acquire title to that land the last time before the first of January, 1885?

A. On March 8th, 1873.

298 19 Q. Has there been any conveyance or is there any conveyance on record by him of the land from that date up to the first of March, 1885?

A. There is none.

20 Q. Has the record title to that tract of land been in any way changed since the first of March, 1885? If so, in what manner and by what instruments?

A. It has been changed by conveyance from William D. Waldron and Martha Naugle and husband to Joseph Waldron, deed dated September 12, 1879, recorded March 20th, 1886; and by deed of Henry Waldron and Catherine McCree and husband to Joseph Waldron, dated June 29th, 1885, and recorded March 20th, 1886; and by deed of Mary Fowler and husband and Israel Waldron and wife to Joseph Waldron, dated December 28, 1880, recorded March 20, 1886; and by deed of David Waldron and wife to Joseph Waldron, dated March 22, 1879, recorded March 20th, 1886, conveying an undivided fourth of said tract of land; and by deed of Martha Guest and husband to Joseph Waldron, dated March 17th, 1884, recorded March 20, 1886; and by deed of Silas Morgan and

299 wife to Joseph Waldron, conveying an undivided one-fourth of said tract, dated October 13th, 1879, and recorded March 20th, 1886, none of which deeds state by what right grantors convey, and only the two mentioned stating what interest is conveyed by the deeds.

Counsel for the intervening petitioner- objects to the answer.

Mr. TAUSSIG: We offer this abstract 108 as an exhibit.

Counsel for the intervening petitioner- objects.

The commissioner marked the paper Exhibit B, and it is hereto attached.

21 Q. Have you examined the title to the west half of the northwest quarter of section 3 and the northeast quarter of the northeast quarter of section 4, both of township 9, range one east?

A. I have.

22 Q. I show you a paper marked "No. 110," and I ask you whether that is the abstract.

A. This is the abstract of the above-described lands, prepared by me.

23 Q. Is it correct, to the best of your knowledge?

A. It is correct, to the best of my knowledge and ability.

24 Q. State, if you please, in whom the title to these two
300 parcels of land, according to the records and the abstract so made from them, was vested on the first of January, 1885, and from that date down to the first of March, 1885.

A. As to the northeast northeast of said section 4, I find in examining the abstract that the legal title seems to remain in one Philip J. Rinsell, there being no conveyance from him to Thomas Waldron, who afterwards conveyed this tract to Henry Waldron; but, passing this gap, *in* the title to both said tracts on the first of January, 1885, and from that time to the first of March following, as shown by the records, was as follows: In Catherine Waldron, a homestead to the extent of $1,000 in value and a dower interest of one-third of the remainder; in Catherine Waldron, an undivided 29 seventy-seconds of the fee; in Emma Morgan, an undivided one seventy-second; in Mary Fowler, and undivided one seventy-second; in Israel Waldron, an undivided one seventy-second; in David Waldron, an undivided ten seventy-seconds; in Martha Naugle, and undivided ten seventy-seconds; in Henry Waldron, an undi-
301 vided ten seventy-seconds, and in Catherine McCree, an undivided ten seventy-seconds of the fee.

25 Q. According to the records, how long had the title to these tracts of land been vested in the parties named by you in the proportions mentioned by you?

A. By deed of August 18, 1862, Thomas Waldron conveyed said northeast northeast of 4 to Henry Waldron, and by deed of February 14, 1859, recorded June 27th, 1859, William Hinchcliff conveyed said west half northwest, section 3, to Henry Waldron, who probably died intestate, seized of said land, prior to 1871, leaving surviving him Catherine, his widow, and eight children, his only heirs-at-law. On October 27, 1871, Silas Morgan and Emma, his wife, by warranty deed dated April 9th, 1872, conveyed to Catherine Waldron an undivided eighth of all said land, conveying as heirs-at-law of Henry Waldron, deceased. On September 17th, 1874, Mary Fowler, described as wife of Abraham Fowler, conveyed to Catherine Waldron, by quitclaim deed recorded October 7th, 1874, all her interest in all of said land. The deed does not state by what right grantor conveys or what interest is conveyed. On March 6th, 1878,
302 *by* deed of Israel Waldron and wife to Catherine Waldron,

recorded March 11, 1878, conveying an undivided one-eighth of all of said land. Deed does not state by what right grantors convey; and by the death of Jacob, one of the sons of Henry Waldron, deceased, probably on or about March —, 1877, who died intestate, leaving no wife or descendants, his interest became vested *vested* in his mother, Catherine, and seven brothers and sisters in the proportion of two seventy-seconds each to his seven brothers and sisters.

26 Q. Then what is the latest date back at which you find the title to these lands in the parties as you stated to have existed on the first of January, 1885?

A. The title has stood in this shape, as far as the records are concerned, since March 11, 1878.

27 Q. Now, has there been any change in the title so appearing from the first of March, 1885, to the 15th of July, 1885?

A. On July 17, 1885, the title to said land as then shown by the records was the same as shown by the records on January 1st, 1885, no further conveyance having been recorded between said dates.

28 Q. Has there been any change in the record title to these
303 tracts of land by conveyances or instruments recorded since the 17th of July, 1885; if so, what are the changes?

A. There have been changes in the title to said land made and recorded since July 17th, 1885, by deeds as follows: By deed of Marthau Naugle and husband to William D. Waldron, dated September 12, 1879, recorded March 2, 1886, conveying an undivided five thirty-sixths of all of said lands, subject to the dower right of Catherine Waldron and coal lease to C. C. & C. Company; deed does not show by what right grantors convey; and by deed of Catherine McCree and husband to Catherine Waldron, dated January 8th, 1885, and recorded March 2, 1886, conveying all their interest in all of said land; deed does not state by what right grantors convey; and by deed of David Waldron, Jr., and wife to Catherine Waldron and Henry Waldron, her son, dated September 19, 1885, and recorded March 2, 1886, conveying 26 acres off north end of the west half northwest, section 3, and eighteen acres off the east side northeast northeast, section 4, all in town. 9, range one east, Catherin Waldron to hold said tract her lifetime, on her death the tract to be her son Henry's; and by deed of Catherine Waldron
304 and Henry Waldron, her son, to David Waldron, Jr., dated September 19, 1885, and recorded March 2, 1886, conveying 44 acres off the south end of west half northwest, section 3, town. 9 south, range one east; and by deed of Catherine Waldron and Henry Waldron, her son, and David Waldron and wife to Israel Waldron, dated September 19, 1885, and recorded December 12, 1885, conveying 15 acres off west side of the northeast northeast, section 4, town. 9, range 1 east.

29 Q. Now, please state how the title to these tracts of land now stands vested by virtue of the deeds mentioned by you as having been recorded in March, 1886, and by the deed mentioned by you as having been recorded on December 12, 1885, by the deed from Catherine Waldron and others to Israel Waldron, dated September 19, 1885.

A. I find that Emma Morgan is entitled to one seventy-second of all of said land, and Mary Foweler — entitled to one seventy-second of all of said land, and Israel Waldron is entitled to one seventy-second of all of said land, excepting fifteen acres off west side northeast northeast, said section 4, and that David Waldron is en-
305 titled to an undivided sixty-nine seventy-seconds of forty-four acres off south side of the west half northwest, said section 3, and that Henry and Catherine Waldron are entitled to an undivided sixty-nine seventy-seconds of twenty-six acres off north end west half northwest, said section 3, and eighteen acres off east side of northeast northeast, said section 4.

30 Q. Mr. Warder, I read to you from the intervening petition of William Henderson and others in this case a portion as follows: "Your petitioners further state that by descent from the said Henry Waldron, deceased, and from the said Jacob Waldron, who died intestate on or about the — day of March, 1877, and by purchases and conveyances made prior to the year 1882 said lands since the 31st day of December, 1881, have been held and owned as follows, to wit: The petitioner, Catherine Waldron, as widow of Henry Waldron, deceased, owns one-third of said lands for her life as her dower right in said lands. She also owns a homestead therein to the value of $1,000, neither of which have been assigned or set off to her by metes or bounds. She also owns in fee twenty undivided fifty-sixths
306 of said land. The said David Waldron, Jr., owns eighteen undivided fifty-sixths of said land in fee, and said Henry Waldron and Catherine Waldron, Jr., each owns nine undivided fifty-sixths of said land in fee, all subject to the dower and homestead rights of the said Catherine Waldron, and the said Catherine Waldron." This petition was filed on the 17th of July, 1885, and I will ask you whether the statement in it as to the ownership of the parties of these tracts of land was on that date correctly made as read to you according to the records then existing.

A. They were not, as I understand them.

31 Q. Assuming, for the purposes of your answer to the question which I am about to propound to you, that the deeds recorded subsequently to the 17th of July, 1885, as heretofore mentioned by you, to wit, the deeds recorded in September, 1885, and in March, 1886, had been recorded before the 17th of July, 1885—I say assuming that for the purposes of your answer, would the statement of the ownership as made in the petition read to you be correct under those deeds?

Counsel for intervening petitioners objects.

A. It would not.

307 Counsel for the intervening petitioners object to the answer.

32 Q. Was the title to these two tracts of land at any time vested, according to the records, in the manner and in the proportions stated in the portions of the petition read to you?

Counsel for the intervening petitioners objects.

A. It was not.

Counsel for the intervening petitioners objects to the answer.

33 Q. Have you, as part of your examination of the title of these two parcels of land, ascertained whether and when Catherine Waldron ceased to be the guardian of Catherine, her daughter, afterwards married to one McCree, and whether and when, if ever, she ceased to be the guardian of Henry Waldron, her son?

A. I find from examination of the records of the Williamson county probate court that on December 15th, 1884, Catherine Waldron made a final report as to her ward, Catherine McCree, formerly Waldron, and was discharged from said guardianship, but the records show no final discharge as to Henry Waldron.

34 Q. I will read to you from Exhibit Q, attached to the
308 petition of William Henderson and others in this cause, being a notice claimed to have been dated and given on the 2nd day of February, 1885, to the Carbondale Coal & Coke Company, the following sentence: "That on and ever since the said first day of January, 1883, the undersigned, Catherine Waldron and David W. Waldon, have been and still are the owners of both the life estate and the fee simple in said lands;" and I ask you whether at any time between the 1st day of January, 1883, and the 2nd day of February, 1885, according to the records, the title was vested according to this statement read to you.

Counsel for the intervening petitioner- objects.

A. It was not as shown by the records.

Counsel for the intervening petitioners objects to the answer.

The abstract marked "No. 110" is offered in evidence and marked "Exhibit C."

Counsel for the intervening petitioners objects.

The paper is hereto attached.

35 Q. Have you examined the title to the northwest quarter of the southwest quarter, southwest quarter of the southwest quarter, the southwest quarter of the northwest quarter, and the west half of the southeast quarter of the southwest quarter of section 34, township 8, range 1 east?

A. I have.

309 36 Q. I show you a paper marked "No. 111," and I ask you to state what it is.

A. This is an abstract of title to said above-described lands, prepared by me.

37 Q. I will ask you to state in whom, according to the records, the title to these lands appeared vested on the first day of January, 1885, and up to and including the 2nd day of February, 1885.

A. I find it difficult to state, there being at least two unrecorded conveyances, which are shown by the records, however, to have been made by the Illinois Central Railroad Company to the State auditor and by him to the county clerk of Williamson county. The title to

this land on and between the dates mentioned would probably be in Tinsley Priddy.

38 Q. Do you find, according to the records, on or between those dates any of the title to that land to have been vested in Sarah Priddy?

A. I find none of the title to have been vested in Sarah Priddy between the dates mentioned.

39 Q. What, if any, changes in the title as stated by you to have been shown by the records up to the 2nd of February, 1885, do you find in the records after that date?

310 A. I find no recorded conveyances of said land, but from the files in the office of the probate court of Williamson county I find that Tinsley Priddy probably died intestate on or about April 1st, 1885, leaving surviving him Sarah Priddy, his widow, and ten children, his only children and only heirs.

40 Q. I read to you from the intervening petition in this case the following statement: "Said Tinsley Priddy was entitled to the rents and royalties which accrued or have become due by virtue of said lease from the date thereof till the death of said Tinsley Priddy, who died intestate in said Williamson county on or about the first day of April, 1885, seized and possessed in fee of the aforesaid lands so leased by him. He left surviving him Sarah Priddy, his widow, who also became administratrix of his estate, and the following children, who join in this petition, to wit, Pettus Priddy, Burke Priddy, Elizabeth Ennis, *nee* Priddy; Amanda Griffith, *nee* Priddy: Mary Walker, *nee* Priddy; Catherine McCree, *nee* Priddy, and

311 Abraham Priddy and Ida Priddy, who are minors, as hereinbefore stated, and also Angelina Geralds, *nee* Priddy" (who does not join in this petition), "as his only heirs-at-law, who are the owners in fee and tenants in common of said land, subject to the dower and homestead rights of said Sarah Priddy therein." I will ask you to state whether this statement so read to you is correct according to the records examined by you.

Counsel for intervening petitioner- objects.

A. The files examined by me in the office of the clerk of the probate court of Williamson county, Ills., show a different state of facts from that shown by the allegation just read. The files examined by me show the state of facts existing at about April 1st, 1885; the allegation read is alleged to show the state of facts on the 17th of July, 1885. I cannot reconcile the two statements of my own knowledge.

Counsel for the intervening petitioner- objects to the answer.

41 Q. In what respect is there any discrepancy? What is the difference between the two?

A. The files examined by me show that said Tinsley

312 Priddy left surviving him a wife and ten children, and the allegation, as I understand it in the petition, showed the existence of but nine children, of which eight are made parties to the petition.

Counsel for the intervening petitioners objects to the answer.

42 Q. Which is the child omitted, if any, in the petition, if you remember?

A. William Priddy seems to be the one omitted from the petition, whom I find mentioned in the files — probate court.

43 Q. In what shape do the files show the heirs of Tinsley Priddy?

A. An affidavit made by Sarah Priddy, I think it was.

44 Q. Stating the heirships?

A. Stating the fact and date of death of Tinsley Priddy and what children he left surviving him.

Mr. TAUSSIG: We offer this as an exhibit, "abstract No. 111."

Counsel for intervening petitioner- objects.

The paper is marked "Exhibit D" by the commissioner and is hereto attached.

45 Q. I will ask you, Mr. Warder, whether these abstracts
313 show the records of the leases for these different parcels of land to the Carbondale Coal & Coke Company.

A. They do.

Cross-examination waived by Mr. Barr, counsel for the intervening petitioner-.

Signature waived.

And the said WALTER TREGONING, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Deposition of Walter Tregoning.

Direct examination by Mr. TAUSSIG:

1 Q. State your name.

A. Walter Tregoning.

2 Q. What is your age, Mr. Tregoning?

A. Forty-four.

3 Q. What is your occupation?

A. Superintendent for the receiver of the Carbondale Coal & Coke Company.

4 Q. Are you a minor by profession?

A. Yes, sir.

5 Q. How long have you been engaged in the business of mining?

A. I have been engaged in the business of mining for a little over 20 years.

314 6 Q. Do you know the lands of the Carbondale Coal & Coke Company?

A. Yes.

7 Q. Do you know the lands which have been spoken of in the examination of Mr. Warder?

A. Yes, sir.

8 Q. As being leased to the Carbondale Coal and Coke Company?

A. Yes, sir.

9 Q. Do you know the rest of the coal lands owned or held under lease by the Carbondale Coal & Coke Company?

A. Yes, sir.

10 Q. Do you know that portion of the coal lands of the Carbondale Coal & Coke Company which has not yet been mined for coal?

A. Yes.

11 Q. Can you tell or can any one familiar with coal lands tell how many tons of coal any acre of these unexhausted lands or any number of acres of these unexhausted lands will yield of coal?

A. I think it would be rather a difficult matter for any one to tell how many tons it would yield to the acre.

12 Q. Supposing that these lands have been explored in the usual manner of exploring coal lands, by running drills at different points of a tract, and supposing that the drill explorations disclosed
315 the fact of the existence of coal on the land, would that be a sufficient indication to you or any experienced miner of the quantity of coal that the land would be likely to yield?

A. Not in that vein; it would not.

13 —. How do you find out how much coal an acre of coal land yields?

A. Well, we find out by measuring it or by working it—that is, supposing the coal to be there, we could measure it and tell the quantity of coal that would be in it.

14 Q. Is the- any way to be approximately certain of the quantity of coal which coal lands will yield other than the actual working of it?

A. There is a way, providing they know for certain the coal is all right, where it is under the acre or the quantity of acres.

15 Q. Please state what are the elements of uncertainty which surround these cases. What are the elements which may interfere with calculations ahead of actual mining?

A. Well, there is various obstacles that would come in the way that you could not mine it. There is what is termed "horsebacks" or "faults" in the coal when it cannot be worked, and there
316 is other things again, such as sulphur and rock, that comes in and portions of the coal where it is no use. You cannot put it on the market. Then on the surface again there is depressions come in where there is no roof that you cannot work it, even when the coal is good underneath. There is acres of it out near Carterville now they cannot work; stands just that way.

16 Q. Will you please explain the meaning of the different terms, such as "horseback," "faults," and "defective roof," which you have used in your answer? Begin one after the other and tell us what they mean.

A. Well, a "fault" or "roll" is a depression in coal—something in the earth that comes down in the coal; just—just splits a portion of the coal out and leaves rock in place of coal or some other combustible; sometimes sand rock; sometimes lime rock, I have seen; sometimes I have seen sulphur; sometimes I have seen slate.

17 Q. You don't mean combustible?

A. I don't mean anything that would burn; it won't burn—non-combustible.

18 Q. Now the next.

A. The next is in the surface. There is a great portion of
317 the coal that we have got at Carterville that we cannot work for the want of top—roof; the surface naturally sets right down on the top of the coal; they cannot work it out; there is acres of it—there where the clay is right down on the coal.

19 Q. Please state what you mean by the roof.

A. The roof is the portion of the earth overlying the coal.

20 Q. You mean the rock?

A. Yes, sir; or whatever it may be that overlies the coal.

21 Q. Will you explain a little more fully what you mean by the roof of a coal mine, taking into consideration the position of the rock, slate, and coal—that is, assume we don't understand anything about it?

A. The — lies in a bed, and the rock or slate lies in a bed over the coal or earth, as the case may be, and the clay lies in a bed underneath the coal.

22 Q. Now, what in the condition of the roof interferes with the safe mining of the coal?

A. Well, the roof whenever the earth comes next to the coal, then it is unsafe for mining coal out.

23 Q. Because there is no support on top?

A. There is no support—no substance hard enough in it to stand up to hold the weight from coming down.

318 24 Q. Can you tell, from your knowledge of these lands—coal lands controlled by the Carbondale Coal & Coke Company other than the 360 acres in controversy here—whether they contain coal enough to supply the company at the — at which they have been mining in the last few years for five or ten or fifty years?

A. No, sir.

25 Q. Can any man?

A. I don't think he can.

26 Q. You stated that you are acquainted with the Henderson, Waldron, and Priddy lands which are in controversy here. State, if you please, whether they are valuable to this corporation.

A. Yes, sir; I should think they were valuable.

27 Q. Why?

A. Well, — the first place, it is the best piece of property, I think, that they have got, the most likeliest piece to have a regular vein of coal in, and it is more convenient to the railroad than any other portion that they have got.

28 Q. Give us the particulars, as far as you know them, of their convenience of location to the railroad as compared with other lands of the concern.

A. Well, the portion of land that is contended for here lies very convenient to the railroad. There is a natural grade from the main line to it all the way.

319 29 Q. When you speak of the "main line" what do you mean?

A. The Carbondale & Shawneetown railroad and the other. There is a good many depressions in the surface that it would cost considerable money to get a road to it.

30 Q. When you speak of "the other" you mean the other lands of the company?

A. The company's; yes, sir.

31 Q. What effect, in your opinion, would the loss of the 360 acres in controversy here have upon the value of the whole estate of coal lands owned and controlled by the Carbondale Coal & Coke Company?

A. If the Carbondale Coal & Coke Company loses that portion of their lands that they have got leased I think they would lose over two-thirds of the value of the property.

32 Q. What, if anything, do you know as to the intentions of the receiver—I mean your knowledge of his intentions—prior to July 17, 1885?

Counsel for the intervening petitioner- objects.

A. The receiver's intentions were to open on the Waldron land—open a shaft on the Waldron land—for the purpose of developing the coal there on the Waldron property. He didn't want to
320 put any expense on the old stand. He said that he could do better by sinking on the Waldron property.

33 Q. How long before the 17th of July, 1885, did you become acquainted with the intention of the receiver?

A. Well, I don't remember now the date; it was all along. It was from the time he got to be receiver. Mr. Harrison, during his administration—he advocated that all the time, from the first time he was down.

Cross-examination by Mr. WASHBURN, for the intervening petitioners:

1 X Q. What relation do you sustain to the Carbondale Coal and Coke Company?

A. Was superintendent of the Carbondale Coal & Coke Company, now for the receiver of the Carbondale Coal & Coke Company.

2 X Q. You mean superintendent of the mining operations?

A. Superintendent of the mining operations now.

3 X Q. How long have you held the position?

A. Something over a year.

4 X Q. What position did you occupy before you became superintendent?

A. Foreman.

5 X Q. Of the same mines?

A. No; only one of the mines.

321 6 X Q. How long did you occupy that position?

A. About five years, I think; somewhere near five years.

7 X Q. How long have you been in the employ of the Carbondale Coal & Coke Company and its receivers?

A. A little over six years—about six and a half years, I think; probably near seven.

8 X Q. Did you work for them before you were superintendent or foreman?

A. No, sir; I was foreman when I started with them; not at Carterville, though.

9 X Q. How far does the Priddy land lie from the present developement or openings of the Carbondale Coal and Coke Company at Carterville?

A. It would be about a mile, I think; somewhere near a mile; a little over, maybe; that joins the Henderson and Parham Carter.

10 X Q. How far is the Henderson and Joe Waldron lands from this opening—this developement at Carterville?

A. Joe Waldron?

11 X Q. Yes; and Henderson.

A. They must be about a mile and a half, I think.

12 X Q. How far are the Catherine Waldron lands and David Waldron?

A. They will be as far away—they will be a mile and a half, too, I think.

322 13 X Q. How far is the Irwin Sizemore land from the developement at Carterville?

A. He is right at it; about thirty yards, I believe.

14 X Q. How far is the Parham Carter land from the developement at Carterville?

A. He joins Priddy. He is just about the same distance. It is a little closer than Priddy.

15 X Q. It lies between the present shaft and the Priddy land, does it not?

A. Yes; I think it does.

16 X Q. Is the G. T. Johnson land closer to the present developement than the Priddy land?

A. No, sir; I think not. I don't remember rightly now. I think Johnson is rather on the north side of the Priddy land, isn't he?

17 X Q. No; he is on the east side and north of Parham Carter.

A. Adjoining Priddy?

18 X Q. Yes; his land is right on the east of Priddy. I will ask you if you have yet come across any of those interruptions in coal formation call "horsebacks" that has diminished the coal more than one-half its thickness.

A. No.

19 X Q. I will get you to state what amount of surface the largest horseback you have come across covers.

323 A. Well, the horseback itself don't cover a great deal, but the impurities of the coal on either side covers a good deal.

20 X Q. Just state how much.

A. I could not tell you, because I never measured the distance. I know there is considerable of it. There is some acres in the slope I know that they could not work on account of the impurities in the coal.

21 X Q. We are talking about horsebacks now particularly.

A. I could not give the dimensions of what it would cover even.

22 X Q. At what particular point, Mr. Tregoning? Is any space as

much as fifty yards square that has occurred those impurities in coal that have rendered it worthless?

A. Yes, sir.

23 X Q. I say at what particular point.

A. I don't know.

24 X Q. What direction from the slope and shaft?

A. You get it both east of the shaft and southwest of the slope.

25 X Q. Where coal has no stone or slate surface cover, roof, isn't it very possible to mine that coal by propping?

A. Not profitably, you cannot.

324 26 X Q. I mean possible; I don't mean whether it can be done profitably or not. Isn't it possible to mine it by propping?

A. Could mine it to a certain extent, but practical mining you could not.

27 X Q. I will change the form of the question a little. How thick is the average thickness of coal at Carterville?

A. The average thickness of coal they generally work?

28 X Q. I mean the whole bed.

A. About nine feet—somewhere about nine feet.

29 X Q. Where there is no roofing for that coal isn't it possible to take out about six or seven feet by leaving some eighteen inches to two feet of top coal for the roof?

A. No, sir.

30 X Q. It is not possible?

A. No; it has been tried and failed. I will tell you, Judge, where you will find a sample of it—right over in Widow Only's land.

31 X Q. About how many tons of coal is there under an acre of ground where the bed of coal is nine feet thick?

A. Well, if the coal is all there I should judge it would be, maybe, ten or twelve thousand tons.

325 32 X Q. What is the rule for computation of the amount of coal. Is it at the rate of a ton for every cubic yard?

A. It is supposed it does.

33 X Q. That is the general rule by which it is calculated—one ton to every cubic yard. You speak of grading between the Carbondale & Shawneetown railway and the land in contest, especially the Waldron land. Tell us whether that grade is an upgrade or a down-grade.

A. It is an upgrade from the railway.

34 X Q. Isn't it a very steep upgrade to the top of the hill?

A. Yes; it is quite a rise to the top of the Waldron property.

35 X Q. About how much grade do you think it would be from the railway to the top of the hill, running due north on the section line?

A. I don't know how much of a grade it would be. I never took any level of it at all.

36 X Q. About how long has the Carbondale Coal & Coke Company been in operation there at Carterville?

A. I don't scarcely know, Judge; from what I can learn they have been some twelve or thirteen years; maybe over or maybe less. I don't know exactly.

326 37 X Q. About how many acres of land have they exhausted of coal there?

A. They have exhausted about 140 acres, I think; maybe more.

Redirect examination by Mr. TAUSSIG, for the defendants:

34 Q. If you started from the present down shaft could you work toward and to the Irwin Sizemore land? Isn't there a big depression between the down shaft and the Irwin Sizemore land; and, if so, what effect would that have upon any such operation?

A. On the west side of the present opening now in the Dodd shaft, the west side, Sizemore land, on the west side of it, there is no top as far as we have gone yet, no roof; the coal seems good, but no roof. We cannot hold it up anywhere we worked towards the Sizemore land yet, and the depression there seems as if we could not possibly work it, and then if we could we would not be safe in doing so.

35 Q. Now, what is the condition of that piece in wet weather, as to water standing on it?

A. Well, there is less or more water on it when it comes heavy rains; it is generally an overflow.

327 36 Q. What effect would that have on the mining operations of that land?

A. It would have the effect of drowning out the shaft altogether, provided there was a hole came through, as there frequently are.

37 Q. When you speak of the water do you speak of the effect of the water on the surface or on the mine and the coal in it?

A. I speak in reference to the water in the mines, if we do ever get a hole through to the surface.

38 Q. When you speak of "drowning" you mean that, if there was a mine started there, if a hole was opened it would drown the mine?

A. Very lik-ly.

39 Q. What is the size of the depression you speak of?

A. Well, now, there is quite a large space of it; it is probably 200 or 300 yards wide, and the length of it I—I don't know exactly how long it is; it is quite a distance, though.

40 Q. Isn't this depression the natural drainage for a large body of land which lies back of it?

A. Yes; it is the drainage for it all until you get across Mr. Pickerson's.

41 Q. What is the distance?

A. The distance is about a little over a quarter of a mile, I think.

42 Q. And how much of the land lying over to the west does it drain?

328 A. It drains a large portion of it; it drains mostly all the land that is around that part of the place.

43 Q. Now, could you, from your present workings, drift towards and reach for mining the Priddy lands?

A. No, sir.

44 Q. Why not?

A. There is too many obstacles in the way, I believe. There is a

ravine and one thing and another, and the coal might give out, for anything I know, in the lower places, where it frequently does.

45 Q. Isn't the distance from the present workings to the Priddy lands an objection which cannot be overcome to reach the Priddy lands from the present workings?

A. Yes, sir; it is too far away; it would not be profitable to try to bring it that distance. In other words, the company could not do it and make money—do anything like pay.

46 Q. Could any other company or any other individual work the Priddy lands profitably, reaching them from the present workings of the company?

A. No, sir.

47 Q. Now, could you reach the Catherine Waldron lands and mine them profitably from the present workings?

A. No, sir.

329 48 Q. For the same reason you stated as to the Priddy lands?

A. Yes, sir.

49 Q. How is it with the Parham Carter lands?

A. No, sir; could not work that, either.

50 Q. How is it about the G. T. Johnson lands?

A. Cannot reach any of those lands from that opening.

51 Q. How would you work these lands—meaning the Priddy, Waldron, Johnson, and the Henderson lands—for coal? What would you do?

A. I would sink a shaft on the Waldron property and build a railroad from the Carbondale & Shawneetown railroad into the opening that was made.

52 Q. Would you sink a shaft on the crest of the hill?

A. Well, I don't know whether I would make it exactly on the crest or not.

53 Q. I mean the top.

A. I know. I would have to determine that afterwards—see whether it was going to be the most profitable location for it.

54 Q. Would you place your shaft so there would be sufficient incline that the gravitation of the cars would carry them down to the railroad track without any power?

A. Yes.

330 55 Q. I mean without the application of any railroad power. You have stated that where mining has been attempted of coal lands that had no roof it has failed?

A. Yes, sir.

56 Q. And you have cited instances of such failure?

A. Yes, sir.

57 Q. Why has it failed, and why is it apt to fail when attempted?

A. It fails because the top part of the coal is not strong enough to carry the weight above it.

58 Q. What would be the effect of it?

A. Consequently it drops down and crumbles in.

59 Q. Caves?

A. Caves; yes.

60 Q. What is the effect of that condition of things as to danger, and what and whom does it endanger?

A. It endangers the miner mostly.

61 Q. How is it as to the possibility of making such mining profitable by substituting propping for the natural roof?

A. Propping won't hold it.

62 Q. Not sufficient strength?

A. Not sufficient strength in the top. Whenever the weight comes in it drops down around the pillars and the props go up through it.

63 Q. Could propping be made safe by a very large expenditure of money?

A. Possibly it might; but I have never seen it tried yet.

331 64 Q. Could it possible be done profitably so as to make the mine return the outlay?

A. No.

65 Q. Now, supposing the roof is good, do you know of defects in the bottom by reason of which the pillars sustaining the roof give way in the form which is designated by miners as a squeeze?

A. Yes, sir.

66 Q. What is that? Let us know about it.

A. Well, the top is a good deal stronger then than the bottom.

67 Q. You mean in those cases?

A. In those cases. A squeeze, as you term it, is the top sinking down and squeezing the coal down in the bottom in the clay and heaving the clay up towards the top.

68 Q. What is the effect of that as to profitable mining, the chances for it?

A. In cases of that kind you have the works to open anew again—the expense of reopening the works.

69 Q. These cases arise, do they?

A. Sometimes they do.

70 Q. You stated in your cross-examination that a cubic yard of ground is supposed to yield one ton. Does that hold out in practice in actual results?

A. Yes; I think it does in that coal.

332 71 Q. In making that estimate do you take into consideration what is lost in the way of pillars, air courses, and roadways?

A. Yes; you have got to take that into consideration, but you don't get the quantity of coal Mr. Washburn said when you take that into consideration.

72 Q. Does not that reduce the quantity of coal per cubic yard?

A. Yes; it reduces the quantity of coal in an acre.

73 Q. In other words, an acre would not yield a ton per cubic yard under it if you take into consideration what is taken by shafts, pillars, and roadways?

A. No.

74 Q. You stated the mines had been in operation for twelve or

thirteen years. Don't you know for a number of years during that period the output of the company's mines was very small?

A. Yes; very small, indeed, a large portion of the time.

By Mr. WASHBURN:

75 X Q. I believe I will ask you what the output of coal there has been for the last eighteen months.

A. I could not answer the question.

76 X Q. What will it average a day?

A. I could not really say. I wouldn't like to say. Mr. Blossom can tell that better than I can.

77 X Q. I will ask you about those squeezes. Have you had any of those squeezes in the mines at Carterville?

A. Yes, sir.

78 X Q. How many of them?

—. We have had one lately.

79 X Q. How many before that?

A. I have not had any before that there.

Signature waived.

333 I, Isaac H. Caldwell, commissioner of the U. S. circuit court for the southern district of Illinois, do certify that the foregoing depositions of William H. Warder and Walter Tregoning were, when taken, then and there reduced to writing in my presence and in the presence of the deponents by George Brown, stenographer; that by the consent and agreement of the attorneys, James Taussig, representing the Carbondale Coal and Coke Company, and William W. Barr, representing William Henderson and others, intervening petitioners, the signature- of deposing witnesses *was* waived and the depositions transcribed by the stenographer.

I further certify that the condensed abstract- of title No-. 108, 109, 110, & 111 and marked "A," "B," "C," & "D" are the same referred to therein and made exhibits in the deposition of William H. Warder.

I further certify that I am not of counsel or attorney to either of the parties to this suit nor interested in the event of this cause. I further certify that the fees for taking said depositions, amounting to $8.80, have been paid by the defendant, The Carbondale Coal and Coke Company, and that same is just and reasonable for the services performed.

Given under my hand, at Carbondale, in said southern district of Illinois, this 14th day of July, 1886.

ISAAC H. CALDWELL,
Commissioner U. S. Circuit Court for Southern District of Illinois.

(Indorsed:) Filed July 15, 1886. J. A. Jones, clerk.

(Here follow Exhibits A, B, C, and D, abstracts of title, marked pages 334 to 367, inclusive.)

368 *Amendment to Petition of Henderson & Others.*

UNITED STATES OF AMERICA, }
State of Illinois. }

United States Circuit Court for the Southern District of Illinois.

To the Hon. Samuel H. Treat, judge, presiding:

By leave of the court first obtained the petition in the cause of Wm. Henderson *et al. vs.* Carbondale Coal & Coke Company is hereby amended by making Emma Morgan, Israel Waldron, and Mary Fowler, children of Catharine Waldron, parties petitioners.

And petitioners hereby represent unto your honor that on the 31st day of December, 1884, the said Emma Morgan, Israel Waldron, and Mary Fowler were each the owner in fee of a one seventy-second part of the west half of the northwest ¼ of section No. (3) three and the northeast ¼ of the northeast ¼ of section No. four, in township No. nine (9) south, range one (1) west, in Williamson county, Illinois, subject to the dower and homestead rights of Catherine Waldron, and that since the begin-ing of this suit that said Emma Morgan and Mary Fowler have conveyed by proper deeds all their interests in said lands to Catharine Waldron, their mother.

BARR & WASHBURN,
Att'ys for Petitioners.

(Endorsed:) Filed October 12, 1886. J. A. Jones, clerk.

369 Then, afterwards, to wit, on said twelfth day of October, in the year last aforesaid, came Howard A. Blossom, receiver the Carbondale Coal & Coke Company, & W. E. Burr, trustee, and filed their answer to the amendment to petition of William Henderson & others as follows, to wit:

Answer to Amendment to Petition of Henderson & Others.

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL & COKE COMPANY *et al.*

Now come the defendants, to wit, Howard A. Blossom, receiver the Carbondale Coal & Coke Company, and W. E. Burr, trustee, and, for answer to the amendment filed by petitioners on the 12th of October, 1886, the defendants deny that Catherine Waldron had, on the 31st day of December, 1884, any such dower or homestead or other rights in the premises described in said amended petition as is therein alleged; and as to all other allegations in said amended petition these defendants say that they have no other knowledge or information concerning the same than they have obtained through the testimony of petitioners and defendants taken in this cause.

And further these defendants say naught.

WM. J. ALLEN, *Sol. for Receiver.*
JAS. & CHAS. S. TAUSSIG,
Sol's for Trustees.

(Endorsed:) Filed October 16, 1886. J. A. Jones, clerk.

370 Then, afterwards, to wit, on the sixth day of November, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order of Dismissal as to G. T. Johnson.

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL & COKE COMPANY. } In Chancery.

In the matter of the petition of William Henderson & others.

Now comes G. T. Johnson, and by leave of court, withdraws and dismisses said petition as far as it concerns the lease held by him.

And afterwards, to wit, on said sixth day of November, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-six, the following further proceedings were had in said court in said cause and entered of record, to wit:

371 *Decree.*

SAMUEL M. DODD *et al.*
vs.
CARBONDALE COAL & COKE COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of William Henderson, Joseph Waldron, Catherine Waldron, David Waldron, Jr., Henry Waldron, Catherine Waldron, Jr., Israel Waldron, Sarah Priddy, Pettus Priddy, Burke Priddy, Elizabeth Ennis, Amanda Griffith, Mary Walker, Catherine McCree, Abraham Priddy, Ida Priddy, Emma Morgan, and Mary Fowler.

This cause being heard upon said petition and amendments thereto, the answers and cross-petitions of said William E. Burr, trustee, and Howard A. Blossom, receiver; the answer of Ethan A. Hitchcock, and upon the evidence adduced, the court finds that on the first day of January, 1885, the four leases described in said petition as made to the Carbondale Coal & Coke Company by Nancy Priddy, Thomas Waldron, Catherine Waldron, and Tinsley Priddy were and have ever since continued to be valid and in force;
372 that the leases of the petitioners to said Ethan A. Hitchcock were made and delivered to him during the pendency of this cause, and that he paid no consideration for the same, and that he had notice of said proceedings; that said petitioners have made ap-

plication to this court for an order on said receiver to pay the royalties claimed to be due to them and have not made legal demand for the same.

Wherefore it is adjudged and decreed that the petition filed by said petitioners be dismissed; that all forfeitures of the leases to said Carbondale Coal & Coke Company declared or attempted to be declared by said petitioners or either of them be and are avoided, set aside, and for naught held, and the said leases of the Carbondale Coal & Coke Company are hereby declared to be in full force.

It is further ordered and decreed that the leases made by the petitioners to said Ethan A. Hitchcock for the premises in controversy be, and the same are, declared void, set aside, and for naught held.

It is further ordered that the petitioners and said Ethan A. Hitchcock be and are enjoined and restrained from interfering with or impairing the rights of said Carbondale Coal & Coke Company and its assigns and of Howard A. Blossom, as receiver of this court, to carry on mining operations on said leased premises; and it appearing that the said receiver has deposited in the registry of this court a sum of money sufficient to satisfy all accrued royalties provided in said leases for the benefit of whom it may concern, and that there is doubt and uncertainty as to the proper parties entitled to said fund, it is ordered that all persons claiming part of said fund shall have leave to present such claims to this court by intervening petition.

It is further ordered that the petitioners pay the costs accrued in this cause, and that execution against them issue.

373 Then, afterwards, to wit, on the eighteenth day of December, in the June term of said court and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Allowing Wm. Henderson & Others an Appeal.

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL & COKE COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of William Henderson *et al.*

And now, on this 18th day of December, 1886, come the parties herein, by their counsel, and upon evidence introduced in open court, it appearing to the court that there is a greater amount than the sum of five thousand dollars involved in the property in suit by the intervening petitioners herein, William Henderson, Joseph Waldron, Catharine Waldron, Henry Waldron, Catharine McCree, David Waldron, Jr., Sarah Priddy, for herself and as next friend of Abraham Priddy, William Priddy, and Ida Priddy, minors, and as administratrix of the estate of Tinsley Priddy, deceased; Pettus
374 Priddy, Mary Walker, Eliza Angelina Jerldo, Elizabeth Ennis, and Amanda Griffith, against The Carbondale Coal and Coke Company, defendants, it is therefore hereby ordered, adjudged, and

decreed by the court that said intervening petitioners be allowed an appeal to the Supreme Court of the United States upon filing a bond in the sum of five hundred dollars within thirty days from this date, to be approved by the court, and at same time said intervenors dismiss their petition herein as to George T. Johnson.

Order Allowing E. A. Hitchcock an Appeal.

SAMUEL M. DODD *et al.*
v.
CARBONDALE COAL & COKE COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of William Henderson *et al.*

And now, on this 18th day of December, 1886, come the parties herein, by their counsel, and upon the intervening petition of William Henderson *et al.*, evidence being introduced as to the value of the property involved in the leases held by Ethan A. Hitchcock,
375 and it appearing to the court, upon oral evidence introduced as to the value of the property involved in the leases held by Ethan A. Hitchcock, and it appearing to the court, upon oral evidence introduced in open court, that the said leases were of the value of more than five thousand dollars, it is therefore hereby ordered that said Ethan A. Hitchcock be allowed an appeal to the Supreme Court of the United States upon filing a bond in the sum of five hundred dollars within thirty days from this date, to be approved by the court.

Then, afterwards, to wit, on the twentieth day of December, in the June term of said court, in the year last aforesaid, came William Henderson & others and filed in the clerk's office of said court their appeal bond, approved by the judge of said court; which appeal bond is as follows, to wit:

Appeal Bond of Wm. Henderson & Others.

Know all men by these presents that we, William Henderson, Joseph Waldron, Catherine Waldron, David Waldron, Jr., Henry Waldron, Catherine Waldron, Jr., a minor, by Catherine Waldron, her gaurdian; Sarah Priddy, Pettus Priddy, Elizabeth Ennis, Amanda Griffith, Mary Walker, Catherine McCree, and Abraham
376 Priddy, minors, by Sarah Priddy, their next friend, principal- and James M. Washburn and Wm. W. Barr and Wm. Wykes, as sureties, are held and firmly bound unto the Carbondale Coal and Coke Company, William E. Burr, trustee, and Howard A. Blossom, receiver of said Carbondale Coal and Coke Company, in the full and just sum of five hundred dollars, to be paid to the said William E. Burr, trustee; Howard A. Blossom, receiver, and the said Carbondale Coal and Coke Company, their executors, administrators, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the fifteenth day of December, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, in a suit pending in the circuit court of the United States for the southern district of Illinois, between Samuel M. Dodd *et al.* against The Carbondale Coal and Coke Company, in which suit
William Henderson, Joseph Waldron, Catharine Waldron,
377 David Waldron, Jr., Henry Waldron, Catherine Waldron, Jr., a minor, by Catherine Waldron, her guardian; Israel Waldron, Emma Morgan, Mary Fowler, Sarah Priddy, Pettus Priddy, Burke Priddy, Elizabeth Ennis, Amanda Griffith, Mary Walker, Catherine McCree, and Abraham Priddy, William Priddy, Ida Priddy, minors, by Sarah Priddy, their next friend, were allowed to interplead, and in which cause a decree was rendered against the above-named persons upon their interpleader in said cause, and an appeal therein having been allowed the said intervenors to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said above-named intervenors shall prosecute their appeal to effect and shall — all damages and costs if they shall fail to make their appeal good, then this obligation to be void; else to remain in full
378 force and virtue.

WILLIAM HENDERSON. [SEAL.]
JOSEPH WALDRON. [SEAL.]
her
CATHERINE x WALDRON. [SEAL.]
mark.
HENRY WALDRON. [SEAL.]
CATHERINE McCREE. [SEAL.]
DAVID WALDRON, JR. [SEAL.]
her
SARAH x PRIDDY, [SEAL.]
mark.

For Herself and as Next Friend of Abraham Priddy, William Priddy, and Ida Priddy and as Administratrix of the Estate of Tinsley Priddy, Deceased.

JAMES M. WASHBURN,
Witness to Mark of Catherine Waldron and Sarah Priddy.

PETTUS PRIDDY. [SEAL.]
MARY WALKER. [SEAL.]
ELIZA ANGELINE x JERLS. [SEAL.]
mark.
ELIZABETH ENNIS. [SEAL.]
AMANDA GRIFFETH. [SEAL.]
JAMES M. WASHBURN, [SEAL.]
As Surety.
W. W. BARR. [SEAL.]
WM. WYKES. [SEAL.]

PETTUS PRIDDY,
Witness to Signature of Elizabeth Angeline Jerls.

Approved.
S. H. TREAT, *Dist. Judge.*

(Indorsed:) Filed December 20, 1886. J. A. Jones, clerk.

379 *Appeal Bond of E. A. Hitchcock.*

Know all men by these presents that we, Ethan A. Hitchcock, J. D. Peters, Wm. W. Barr, and William Wykes, are held and firmly bound unto William E. Burr, trustee; Howard A. Blossom, receiver of the Carbondale Coal and Coke Company, and the Carbondale Coal and Coke Company in the full and just sum of five hundred dollars, to be paid to the said William E. Burr, trustee; Howard A. Blossom, receiver, and the Carbondale Coal and Coke Company, their certain attorney, executors, administrators, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a term of the circuit court of the United States for the southern district of Illinois, in a suit depending in said court between Samuel M. Dodd *et al.* against The Carbondale Coal and Coke Company, wherein the said E. A. Hitchcock was made a defendant upon the petition of William E. Burr, trustee as aforesaid, in which cause a decree was rendered against the said Ethan

380 A. Hitchcock, from which decree the said Ethan A. Hitchcock has prayed and been allowed an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Ethan A. Hitchcock shall prosecute his said appeal with effect and answer all damages and costs if he shall fail to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

E. A. HITCHCOCK. [SEAL.]
J. D. PETERS. [SEAL.]
W. W. BARR. [SEAL.]
WM. WYKES. [SEAL.]

Approved.
S. H. TREAT,
Dist. Judge.

(Indorsed:) Filed December 20, 1886. J. A. Jones, clerk.

381 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of the original bill of complaint and of Exhibits A and B thereto, the order appointing John W. Harrison receiver, the cross-bill of William E. Burr, trustee, together with a true and complete copy of all the papers filed and proceedings thereon had, in the matter of the intervening petition of William Henderson, Joseph Waldron, Catherine Waldron, David

Waldron, Jr., Henry Waldron, Catherine Waldron, Jr., Israel Waldron, Sarah Priddy, Pettus Priddy, Burke Priddy, Elizabeth Ennis, Amanda Griffith, Mary Walker, Catharine McCree, Abraham Priddy, Ida Priddy, Emma Morgan, and Mary Fowler in a certain cause wherein Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, and Andrew C. Bryden are complainants in original bill and The Carbondale Coal and Coke Company, James C. Bryden, and Margaret Bryden, administratrix of the estate of William Bryden, deceased; Charles Miller, and William E. Burr, trustee, are defendants; William E.
382 Burr, trustee, complainant in cross-bill, and Carbondale Coal and Coke Company, James C. Bryden, and Margaret Bryden, administratrix of the estate of William Bryden, deceased; Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, Andrew C. Bryden, and John W. Harrison are defendants in said cross-bill, and Charles Miller, trustee, is complainant in cross-bill and The Carbondale Coal and Coke Company, James C. Bryden, and Margaret Bryden, administratrix of the estate of William Bryden; Samuel M. Dodd, James G. Brown, Sylvester H. Laflin, Edwin Harrison, George A. Madill, John J. O'Fallon, Andrew C. Bryden, and John W. Harrison are defendants in said cross-bill, as truly and completely as the same appear of file and record in my said office.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this fourth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and twelfth.

JAMES T. JONES, *Clerk.*

383 In the Supreme Court of the United States. October Term, 1887.

WM. HENDERSON *et al.*, Appellants,
vs.
THE CARBONDALE COAL & COKE CO. *et al.*, Appellees.

Assignment of Errors.

And now comes the appellants, by James McCartney, their solicitor, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1st. The circuit court erred in granting a rehearing to the receiver of the Carbondale Coal & Coke Co.

2nd. The court admitted and considered improper evidence on the final hearing.

3rd. The final decree entered is not sustained by the evidence and is contrary to equity.

384 4th. The court erred in dismissing petition of petitioners.

5th. The court erred in declaring the leases in question made to the Carbondale Coal & Coke Co. to be in full force.

6th. The court erred in decreeing that the leases made to E. A. Hitchcock (who appeals separately) are null and void and in setting the same aside.

7th. The court erred in restraining appellants from interfering with the Carbondale Coal & Coke Co. and its receiver and assigns in regard to said leased premises.

8th. The court erred in requiring petitioners, appellants, to file claims in court for the royalty or rent money deposited in the registry of the court by the receiver of the Carbondale Coal and Coke Co.

By reason whereof the appellants pray that said decree may be reversed, etc.

385 By JAMES McCARTNEY,
Att'y for Appellants.
W. W. BARR, *Of Counsel.*

And the said E. A. Hitchcock, a defendant in said proceedings and who appeals separately from the said decree, by James McCartney, his attorney, comes and says that there is manifest error in the record and proceedings aforesaid, in this, to wit:

1st. The court erred in rendering the decree because it is not sustained by the evidence and is contrary to equity.

2nd. The court erred in making him a party defendant.

3rd. The court erred in granting a rehearing in the cause.

386 4th. The court erred in decreeing that the leases made to him were null and void.

5th. The court erred in decreeing "that all forfeitures of the leases to said Carbondale Coal & Coke Co. declared or attempted to be declared by said petitioners or either of them be and are avoided, set aside, and for naught held."

6th. The court erred in decreeing that the leases of the Carbondale Coal & Coke Co. were in full force.

7th. The court erred in restraining him from interfering with the Carbondale Coal & Coke —, its assigns or receiver, to carry on mining operations on the leased premises.

By reason whereof he prays that such decree may be reversed, etc.

JAMES McCARTNEY,
Att'y for Appellant Hitchcock.
W. W. BARR, *Of Counsel.*

Endorsed on cover: S. Illinois C. C. U. S. No. 247. William Henderson, Joseph Waldron, Catharine Waldron, Henry Waldron, *et al.*, appellants, *vs.* The Carbondale Coal & Coke Company, William E. Burr, trustee, and Howard A. Blossom, receiver. No. 248. Ethan A. Hitchcock, appellant, *vs.* The Carbondale Coal & Coke Company, William E. Burr, trustee, and Howard A. Blossom, receiver. Filed October 17, 1887.

Supreme Court, U. S.
FILED,
DEC 12 1890
CLERK

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. 247.

WILLIAM HENDERSON, JOSEPH WALDRON, CATHARINE WALDRON, DAVID WALDRON, JR., HENRY WALDRON, CATHARINE McCREE, SARAH PRIDDY, ABRAHAM PRIDDY, WILLIAM PRIDDY, AND IDA PRIDDY, AS ADMINISTRATRIX OF THE ESTATE OF TINSLEY PRIDDY, DECEASED, APPELLANTS,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER, APPELLEES.

No. 248.

ETHAN A. HITCHCOCK, APPELLANT,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER, APPELLEES.

APPEALS FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ABSTRACT, BRIEFS AND ARGUMENT,

BY W. W. BARR, ATTORNEY FOR APPELLANTS, WILLIAM HENDERSON, ET AL.,

AND BY

JAMES McCARTNEY, ATTORNEY FOR APPELLANT, ETHAN A. HITCHCOCK.

FREE PRESS STEAM PRINT, Carbondale Ill.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 247.

WILLIAM HENDERSON, ET AL., APPELLANTS,

vs.

THE CARBONDALE COAL AND COKE COMPANY, ET AL., APPELLEES.

No. 248.

ETHAN A. HITCHCOCK, APPELLANT,

vs.

SAME APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ABSTRACT

OF PLEADINGS AND PROOF.

October 14th, 1884, certain stockholders of the Carbondale Coal and Coke Company, a corporation of the State of Illinois, filed a bill in Chancery in the United States Circuit Court for the Southern District of Illinois, alleging:

That the corporation was formed October 6th, 1872, for the purposes of coal mining and coke making; that it was authorized by its charter to issue $50,000 capital stock, which might be increased to $1,000,000; that on September 22nd, 1884, there were 5,960 shares of stock outstanding of the par value of $100 per share; that on February 1st, 1878, the company issued $50,000 in bonds, giving a trust deed to secure the same on all its real estate and leasehold property; that William E. Burr was named as trustee for the bondholders in said trust deed, in which trust deed it was provided, (see copy of trust deed, exhibit A, pages 8, 9, 10, 11, 12, 13, and 14 printed record), that,

"Whereas, for the further securing of said indebtedness, said Carbondale Coal and Coke Company has agreed, and hereby covenants and agrees, that for each and every ton of coal mined and extracted by said company from the lands hereinbefore described as the "first group of lands," (being the lands owned in fee by said company), the said company shall and will, within thirty days after said coal shall have been so mined and extracted from said lands, deposit with William E. Burr, trustee, or his successors in trust, the sum of five cents (5-100 of one dollar) for each and every ton of said coal mined, the fund thereby created to be by said trustee or his designated successors carefully accumulated as a sinking fund pledged for the full payment of said indebtedness, and to be thereto applied if necessary as hereinafter provided. Said fund shall be deposited by said trustee in his name as trustee for the Carbondale Coal and Coke Company and its bondholders in such safe and reliable depository in the City of St. Louis as he may from time to time select, at a rate of interest thereon of not less than four per centum per annum; which said interest said trustee shall incorporate with the principal sum of said sinking fund. And whereas, said Carbondale Coal and Coke Company has further covenanted and agreed for the still further securing of said indebtedness, that all moneys arising from any sale of town lots, as hereinafter provided for, shall be received and held by the trustee herein and incorporated by him with the said sinking fund as a part thereof, and thereafter held by said trustee in the manner above described, pledged for the further security of the indebtedness hereinbefore recited. Now, therefore, * * * * * if said Carbondale Coal and Coke Company shall fail to keep and perform on its part all or any of the covenants and agreements hereinbefore recited, or if any of said bonds shall not be fully paid on maturity thereof according to the terms and promise of the same, or if the semi-annual installments of interest upon any five of the said bonds shall at any time be due and unpaid, then this deed shall remain in full force and virtue, and the said party of the second part (the trustee) * * * * * 'shall proceed to apply the sinking fund' herein mentioned towards the payment of said indebtedness, and if the said fund be not sufficient to satisfy the same shall then proceed to sell the property," etc.

It is further alleged in the bill of complaint, that on the 1st day of January, 1881, the Carbondale Coal and Coke Company purchased and consolidated with a certain other mining and business corporation which had been organized under and pursuant to the laws of the State of Missouri, but whose property and interests were principally in the County of Jackson and State of Illinois, and that by such purchase the Carbondale Coal and Coke Company succeeded to and became the owner of the assests and assumed the liabilities of the company with which it consolidated, to-wit: The St. Louis Coal and Coke Company.

That on February 2nd, 1880, the St. Louis Coal and Coke Company had issued $75,000 of its bonds and had given a trust deed to secure the same, with Charles Miller as trustee, and containing a condition for the deposit with the trustee of five cents per ton for all coal

mined as a sinking fund, identical in all respects with the conditions in the trust deed of the Carbondale Coal and Coke Company so far as concerns this portion of the sinking fund.

It is further alleged in the bill of complaint:

"That the sum of five cents per ton, for the purpose of creating a sinking fund according to the terms of the trust deed of February 1st, A. D. 1878, has not been paid in whole, but only to the extent of something over $6,000, but that said corporation is in default in that regard to a large amount; that in consequence of the stringency in the money market and lack of confidence in business enterprises the said corporation has been unable to borrow money and continue its business in such volume and to such extent as to render it remunerative; and your orators further represent that from time to time the said corporation, in addition to its mortgage debts, has become indebted on account of loans, labor, real estate, notes and otherwise in the sum of about one hundred and seventy-five thousand dollars."

The bill closes with a prayer for the appointment of a receiver.

Copies of the trust deeds made by each of said companies are attached as exhibits.

On the same day the bill was filed, to-wit: October 14th, 1884, the court appointed John W. Harrison receiver.

On July 17th, 1885, William Henderson and others lessors of coal lands (or their grantees and heirs) to the Carbondale Coal and Coke Company, filed an intervening petition in the cause, alleging the execution of leases to the Carbondale Coal and Coke Company in the months of March and April, 1873, on various tracts of land aggregating 365 acres, each lease containing a condition, that the said Carbondale Coal and Coke Company, its successors or assigns, "should pay annually on the first day of January to the lessors, their heirs or other legal representatives who at the time shall be legally entitled to the life estate or fee simple ownership of the land, the sum of one dollar for each acre of the tract or surveyed subdivision out of which no coal shall at that time have been mined and removed." It was also provided that for all coal taken out of said lands the company should pay the lessors the sum of five cents per ton royalty, but until coal was mined the sum of one dollar per acre should be paid as above, provided that each of said leases contained the following clause:

"And it is further agreed, that if at any time said party of the second part" (the Carbondale Coal and Coke Company), "its successors or assigns, shall be in default, and fail to pay any sum due for rent or royalty as aforesaid for the term of ten days after written demand therefor by the party legally entitled to demand and receive the same, the party of the second part, its successors and assigns, shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on account of which said unpaid sum shall have become due, and after such default and demand as aforesaid the

party legally entitled to the life estate or fee simple ownership of said land may at once, or at any time thereafter, enter into the exclusive possession thereof, the mines and all the appurtenances thereunto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives."

Alleges further, that on the first day of January, 1885, there was due and unpaid on the four leases set up in the petition the total sum of $568.34, as follows:

On the Henderson lease $80, accrued rent for the year 1884.

On the Joseph Waldron lease $33.34, balance accrued for the year 1884.

On the Catharine Waldron lease $315, accrued for the years 1882, 1883 and 1884.

On the Priddy lease $140, accrued for the year 1884.

It is further alledged that demand was made in writing upon John W. Harrison, the receiver, more than ten days prior to the filing of the petition by the persons entitled thereto for the payment of the amount due on each lease separately, but that no payments thereon had been been made, nor offer to pay the same, nor any part thereof, and petition prays that the "Court will adjudge, decree and declare that each and every of said leases is absolutely forfeited and forever null and void and of no effect whatever."

Copies of the leases in each case and the written demands are attached as exhibits.

On August 6th, 1885, the receiver, John W. Harrison, filed an answer to the intervening petition in which it is alleged:

That the Carbondale Coal and Coke Company at various times paid to various parties, on leases to various tracts of land, $12,016.24 for rents, paid to different persons claiming ownership, title or possession, and that the titles to said lands have become so obscure that respondent is in doubt as to who the lawful holders are of said leases, and has been advised that he may not without risk pay any sums claimed to be due upon said leases; that the Carbondale Coal and Coke Company has paid to the lessors of said lands rent for a long series of years without having mined a pound of coal on any of said lands, by reason of which it has acquired valuable equitable interests in said lands; that said company has never enjoyed any advantages from said leases and has never in any way interfered with the leased premises and has contented itself in the past ten years with simply paying the leasehold rate of one dollar per acre; that if said leases were forfeited and all rights of the Carbondale Coal and Coke Company thereunder destroyed, said corporation would receive a severe blow thereby, and its stock be rendered well nigh worthless. Should these leases fall into the hands of hostile or rival coal companies, this company would be seriously embarrassed and its property rendered almost valueless; that at no time heretofore have lessors made application for any order of the court requiring the receiver to pay

the rent, nor had he any power or authority to pay the same without such order; that it has been the long established custom that the payment of the rent of the leased lands has been changed to the latter part of December, and the lessors have been in the habit of waiving the exacting conditions of forfeiture and accepting the leasehold money in December, and in many instances when not paid in December of bringing suits before justices of the peace for it; that although frequent defaults of the Carbondale Coal and Coke Company in the payment of rents have been made, lessors never sought to have them declared forfeited until the property had passed into the hands of the receiver.

That under the orders of the court, on the 16th day of October, 1884, $25,000 of receiver's certificates were issued, to be known as "Firsts," and on the 18th day of November, 1884, $9,610.95 were issued, to be known as "Seconds," and on the 10th day of January, 1885, $12,175.82 were issued, to be known as "Thirds," and on May 13th, 1885, $25,000 in other certificates were ordered issued to provide for the payment of the "Firsts," and that all these orders were made prior to the filing of the petition of lessors in this case, and they are each a paramount lien on all the property and rights of the Carbondale Coal and Coke Company in the custody and possession of the receiver, including said leases, and the holding of said leases was a great inducement to purchasers of the receiver's certificates; that the same inducements largely contributed to the sale of the bonds of the Carbondale Coal and Coke Company, and that to protect such innocent purchasers of receiver's certificates and company bonds, and that no injustice may be done them, that the receiver be permitted to pay said rents, and that William Burr, the trustee in the trust deed now, be made a party to this proceeding; that because of the obscurity and doubt as to the rights of the respective intervenors in the leases, that the matter be referred to one of the masters of the court to hear the evidence and report upon the question of their rights, etc.

That there has been no laches on the part of the receiver or the company, nor injury suffered by the intervenors, and that the present harsh and inequitable demand is not made by the lessors voluntarily, but is influenced by outside hostile and would-be competing corporations desirious of embarrassing the operations of the Carbondale Coal and Coke Company and destroying the value of its property; and finally respondent avows his willingness to carry out any order of the court necessary to maintain the validity of the leases.

On the 2nd day of September, 1885, the intervening petitioners filed exceptions to the answer of the receiver, alleging that the receiver in his answer failed to set forth how the title to the leaseholds in question had become obscure, and claiming that if the allegations in the answer were true they constituted no good reason why the prayer of the intervenors should not be granted.

On the 15th day of September, 1885, the court entered a decree in the cause as follows:

"And now, on this 15th day of September, 1885, come the parties to the intervening petition by his counsel, and also the parties to the

principal cause, and the receiver by their counsel, and submit to the court the questions arising on said intervening petition, on the petition and the accompanying exhibits, and the answer of the petitioner (receiver) thereto.

"And the court having heard and considered the same, as well as the arguments of counsel thereon, and being sufficiently advised in the premises, doth order and decree that the prayer of the petitioners be granted, and that the leases in question, which are set forth at large in the petition, are hereby declared forfeited and null and void."

On September 23rd, 1885, the receiver moved the court to modify the decree and offered to advance reasons why the decree should be modified.

On September 25th, 1885, a petition for a rehearing of said cause was filed by the receiver, alleging surprise and the depressing effect it had on the property of the company; that he did not suppose he was in default in not paying the rent, that he did not know who were the parties in interest and did not suppose that he could pay it without an order of the court; that the leases are of great value to the corporation and that he was preparing to sink a shaft and open up coal mines on the leased property; that the decree was passed without notice to the trustees of bondholders, who desire to answer, and he prays for a rehearing of the cause.

On the same day, to-wit: September 25th, 1885, the court ordered that a rehearing be granted, and that William E. Burr, trustee, be allowed to file a cross-bill.

October 20th, 1885, the cross-bill of William E. Burr was filed, containing similar allegations to those in the petition of the stockholders, setting out in full the trust deeds securing $50,000 in the bonds of the Carbondale Coal and Coke Company, and $75,000 in bonds issued by the St. Louis Coal and Coke Company, alleging the failure to pay the interest on the same and the practical insolvency of the Carbondale Coal and Coke Company, and prays for an accounting, the foreclosure of the trust deed and sale of the property, etc.

February 23rd, 1886, William E. Burr files his answer as trustee for the bondholders of the Carbondale Coal and Coke Company to the intervening petition of William Henderson, et al., alleging the same facts set out in the answer of the receiver to the same petition, praying that the intervenors' petition be dismissed, or the facts alleged be referred to a master to hear evidence and report upon the question of the rights of the petitioners, etc.

On March 2nd, 1886, an amendment was filed to the intervening petition of William Henderson, et al., alleging the making and entering of the decree of September 15th, 1885, by the court, finding the leases in question to have been forfeited and declaring them to be null

and void; that afterwards and before any motion was made for a rehearing or a rehearing granted, that all the intervening petitioners had leased the same grounds and tracts of land described in the former leases to Ethan A. Hitchcock for mining purposes, which leases were recorded and offered to be produced in court.

To which amendment to the petition William E. Burr, trustee, filed an answer March 4th, 1886, alleging the truth of the letting to Hitchcock, but asserting that notwithstanding the same the rights of the Carbondale Coal and Coke Company therein remain unimpaired; that Hitchcock has by said leases acquired no equitable or legal interest therein; that Hitchcock did not take said leases to himself, but obtained them for the Crystal Plate Glass Company, a corporation of the State of Missouri, the real party in interest; that said corporation has no right under its charter or the laws of the State of Illinois to receive or hold such leasehold estates or to operate coal mines.

Prays that the leases to Hitchcock be cancelled and the petitioners restrained from interfering with the company.

March 4th, 1886, Howard A. Blossom, receiver of the Carbondale Coal and Coke Company, who appears to have succeeded John W. Harrison, files an answer to the amended petition of intervening petitioners, alleging the same matters set forth in the answer of the trustee, and alleges the deposit of $1,100 in court to pay the amount of rents found to be due.

On the 10th of April, 1886, William E. Burr filed an amendment to his answer, asking that E. A. Hitchcock be made a defendant in the cause and that he show cause why his leases should not be brought into court and cancelled.

May 12th, 1886, E. A. Hitchcock files his answer to the intervening petition, alleging the execution of the leases to him, admitting the forfeiture of the leases made by the same parties to the Carbondale Coal and Coke Company and the making and entering of the decree of the circuit court declaring the same to be void; avers that he was informed of the entering of the decree of forfeiture, and thereupon he, having had some negotiations previously concerning the leasing of these lands in the event said leases were found to be void, did, upon learning said facts, in good faith and for a valuable consideration, lease the same, intending to immediately proceed to mine the coal thereon; that he paid a valuable consideration for said leases in perfect good faith for the purpose of mining the coal from the same for himself and not for any other person or corporation. Avers that said Carbondale Coal and Coke Company has yet unforfeited lands and leasehold property more than it can take the coal from in the next fifty years, and that it would be an irreparable injury to the lessors if

hey should be compelled to wait the slow and uncertain movements of an insolvent corporation.

EVIDENCE OF INTERVENORS.

Sarah Priddy testifies: That her husband, Tinsley Priddy, executed a lease to the Carbondale Coal and Coke Company on one hundred and forty acres of land on the 8th day of March, 1873; that he died April 1st, 1885, intestate, leaving herself his widow, who was appointed administratrix of his estate about the middle of April, 1885, and ten children, giving their names and ages; that dower and homestead has never been assigned in the leased lands nor partition made; that at the time of his death the Carbondale Coal and Coke Company owed Tinsley Priddy $140 for rent of land leased, due January 1st, 1885, for the year 1884, none of which was ever paid Tinsley Priddy or herself in any capacity. Thinks the company paid Tinsley Priddy each year up to the year 1884. Tinsley Priddy was in the possession of the land in question all the time from the date of the lease until his death, and she has been in indisputed possession ever since.

Catharine Waldron testifies: Is the widow of Henry Waldron, deceased. He died in 1869 intestate. He left one hundred and five acres of land, describing it, and eight children, giving names and ages. The one hundred and five acres of land left by Henry Waldron was leased to the Carbondale Coal and Coke Company April 5th, 1873, by Catharine Waldron, Mary Fowler and Catharine Waldron as guardians of the other minor heirs. Since the lease was executed conveyances of portions of the land have been made by some of the heirs to their mother, Catharine Waldron, and other heirs; and one of the children has died intestate and without marriage or issue. Neither dower nor homestead rights have been assigned in the land nor partition made; that possession, unquestioned and indisputed, has been held of the land by herself since her husband's death; that the Carbondale Coal and Coke Company have paid her the rent of said lands leased to it every year until the year 1882; that the company now owes her for rent for the years 1882, 1883 and 1884, $315.

Israel Waldron testifies: Is son of Catharine Waldron, the last witness; owned one-eighth interest subject to dower and homestead until March 6th, 1878, in the land of which his father died seized. Never signed any lease for his interest in the land, nor accepted any rent, nor was any rent offered him. The Carbondale Coal and Coke Company has never had any possession nor exercised any control over any of the land leased to them by Catharine Waldron.

Joseph Waldron testifies: On the 11th day of March, 1873, Thomas Waldron leased eighty acres of land, described, to the Carbondale Coal and Coke Company. Thomas was his father, who died May 11th, 1876, intestate, leaving a widow who died in February, 1884. His father left only three children, Daniel Waldron, Sr., Martha Guest and himself and children of a deceased son, all of whom have conveyed their interests in said land to him. Sets out all of the deeds in full in the evidence. There was due him for rent of land from the Carbondale Coal and Coke Company from March 1st, 1884, to January 1st, 1885,

$33.34; the rent for January and February, 1884, was paid him by the company. He made a demand in writing of John W. Harrison, receiver of the Carbondale Coal and Coke Company, for this money January 1st, 1885. Demand is set out in full in evidence. He delivered this demand to William Henderson to be mailed to John W. Harrison, receiver of the Carbondale Coal and Coke Company at St. Louis, Missouri. Neither the receiver nor the company has ever paid him him any rent since that time, nor have they ever been in possession nor exercised any control over any of said land.

Robert Winning testifies: Has been inspector of coal mines for two and one-half years. Was mine boss for the Carbondale Coal and Coke Company for four years. Has been mining and prospecting for thirty years. Is well acquainted with the coal mines of the Carbondale Coal and Coke Company and the coal deposits in the vicinity of Carterville. Was prospecting before the mines were opened to find the limits of the coal field. Had charge of and kept journal of prospect holes. Put down eight drill holes. After the mines were opened about six years, began working in them—track laying, bossing and prospecting. The coal vein is from eight and one-half to nine and one-half feet thick. It will turn out over 7,000 tons of coal to the acre, allowing twenty-five per cent. for slack and pillars to support the roof. In some places the top coal cannot be got, which is about twenty-two inches thick. When they cannot get the top coal they get 6,000 tons to the acre, allowing the same for slack and pillars. The Carbondale Coal and Coke Company got from their mine in 1880, 150,000 tons of coal; in 1881, 200,000 tons; in 1882, 240,000 tons; in 1883, 144,800 tons; in 1884, 108,735 tons; in 1885, 63,737 tons. The average per year from 1880 to 1886 is 181,664½ tons. The mine has been worked fifteen years. About one hundred and three acres are exhausted. It would require fifty six years to exhaust the leased lands of the Carbondale Coal and Coke Company, leaving out the forfeited leases, allowing them at the rate of eleven acres per year. I understand they have in the vicinity of Carterville six hundred and seventeen acres leased and yet unworked, deducting leased lands of intervenors.

William Henderson testifies: The Carbondale Coal and Coke Company leased the eighty acres of land I own for mining coal April 5th, 1873. The land was leased by Nancy Priddy, widow of Pettis Priddy, and guardian of his minor heirs. The land was conveyed to me prior to January 1st, 1885. Deeds from widow and heirs copied in evidence. Nancy Priddy held possession of the land from the date of the lease until 1879 and paid taxes on the same. Patrick Gooden held possession and paid taxes from 1879 until 1881, and I have held possession and paid taxes from 1881 until the present time. There is $80 due me for the rent of the year 1884. January 1st, 1885, I sent a written demand for this rent in a letter addressed to John W. Harrison, receiver of the Carbondale Coal and Coke Company, St. Louis Mo. Also gave the number and street, but don't now recollect what they were. On the same day I also mailed a demand for Joseph Waldron to same party. I leased my land to E. A. Hitchcock about three days after the Carbondale Coal and Coke Company's lease was declared forfeited

by the United States circuit court in the month of September, 1885, and before I heard of the rehearing being granted. I have been paid or tendered no rent since January 1st, 1885.

David Waldron, Jr., testifies: I owned five-eighths of land leased by Catharine Waldron to the Carbondale Coal and Coke Company, subject to her dower and homestead. There was five-eights of $315 due me for rent of the years 1882, 1883 and 1884 on the land. On January 1st, 1885, my mother, Catharine Waldron, and myself made a written demand, through James M. Washburn, our attorney, by mail on John W. Harrison, receiver of the Carbondale Coal and Coke Company, and also, if he thought proper, on Edwin Harrison, a principal stockholder in the company. I have not been paid anything on this rent since January 1st, 1885. The Carbondale Coal and Coke Company paid us for the years 1881 and 1882. H. A. Blossom told me since the leases were declared forfeited that the money was ready for me and the other shares any time I wanted it. Have resided on this land all my life. The Carbondale Coal and Coke Company never had any possession or control over it for mining or other purposes.

James M. Washburn testifies: I prepared three written demands for rent due on coal mining leases—one for Priddy, one for Johnson and one for Catharine and David Waldron—and sent them by mail in a registered letter addressed to John W. Harrison, St. Louis, Missouri. In a few days I received a receipt for them. Copies of the demands sent and return registry receipts are filed with evidence. On the same day I sent by registered letter written demands for each of said parties to Edwin Harrison, St. Louis, Missouri, and a few days afterwards received a registry return receipt, which is also filed with evidence. I sent these to Edwin Harrison for the reason that I was informed that he was a large stockholder and a sort of general superintendent of the business of the company. I sent these demands February 2nd, 1885.

EVIDENCE FOR APPELLEES.

G. F. Johnson testifies: That he was one of the intervening petitioners in this cause, but that he has now received the money due him for rent and is satisfied.

H. A. Blossom testifies: That he is and has been receiver for the Carbondale Coal and Coke Company since April 15th, 1886. From October, 1884, until April 18th, 1885, was secretary for John W. Harrison, receiver, and from the last date until appointed receiver was general manager for the receiver. I have become familiar with the coal lands owned by the corporation. The effect on the estate of the Carbondale Coal and Coke Company by a forfeiture of the leases of the intervening petitioners would be to reduce the value one-half or more. The prospect of realizing the debts of the corporation, if these leases were canceled, would be very limited. My reason for that opinion is that the opportunities for working those lands is so much greater that it would be almost impossible for a company operating the other lands to compete with them by reason of the natural advantages, there being

a slight grade from the railroad to the top of the hill on the Waldron land, and if a switch was built from the railroad to the top of this hill the cars loaded there with coal would gravitate down to the railroad without other assistance. It would be necessary to sink a new opening on the Waldron land. I have read the deposition of Robert Winning, and his statements are probably correct, but there are numerous difficulties in the way by reason of lack of roof and sometimes of bottom, faults in the coal, horsebacks, splits and the natural fall of the coal away from the bottom of the shaft. There is no way to determine accurately the quantity of coal an acre of coal land will produce except by working it. The subject of the payment of ground rent on the leases in question came up shortly after the 1st of January, 1885, during Mr. Harrison's administration, and was referred to his solicitor, Mr. Allen, who advised him that it was not necessary for him to pay those at once; that there was some difference of opinion in respect to certain titles, and that it would not be safe to pay the money until he had an order of the court; and that he looked upon it as an extraordinary claim against the receiver, which these parties should present to the court, setting forth the facts and getting an order instructing him to pay the money. The difficulties were largely with the Catharine Waldron lands and the Tully heirs; not so much with Henderson, for we found he had made his title good by several suits against the company in previous years. Judge Allen's advice was not to do anything about it, not to pay them, but let those people go and get the necessary orders. The company has never worked any of these lands. The coal is under the surface somewhere from thirty-five to ninety feet, and there never has been any opening made. Catharine Waldron has received $839.30 in rents, and the rent for 1882, 1883 and 1884 was paid into court by me. William Henderson has received $880, and the rent for 1884 was paid into court. Tinsley Priddy received $1,540, and the rent for 1884 was paid into court. The heirs of Thomas Waldron have received $440, and the rent of 1884 was paid into court. Joseph Waldron has received $1,540. This is up to 1885. Mr. Harrison, when receiver, intended to ask the authority of the court to expend $15,000 or $20,000 in opening up the land held under the leases in controversy for mining coal, but neglected it until this petition was filed. The company, by arrangement, was accustomed to allow these lessors to buy goods at the store, to be applied on their accounts for rent. William Henderson and Tinsley Priddy sued the company for their rents and got their money. I have heard rumors that the Ore and Steel Company were going to take these lands if they could get rid of the leases. The Crystal Plate Glass Company was not known down there in the matter. The St. Louis Ore and Steel Company are the competitors of the Carbondale Coal and Coke Company. The effect on the Carbondale Coal and Coke Company, if either of these companies were to obtain control of the lands in dispute, would be disastrous. Mr. Hitchcock is receiver of the St. Louis Ore and Steel Company and president of the Crystal Plate Glass Company. The Crystal Plate Glass Company could make no use of these leased lands that I know of, except to come into competition with our trade with the railroad. Mr. Hitchcock has stated to me that our coal was

not valuable for his purposes. I have a contract with the Ore and Steel Company to deliver them a minimum of 30,000 tons and a maximum of 100,000 tons during the season. They have received 900 tons and have called for no more. The officers of the Carbondale Coal and Coke Company, in January and February, 1885, were A. C. Bryden, president, and J. C. Bryden, secretary. J. C. Bryden lived at Carbondale and kept the records of the company in the office of W. J. Allen there a part of the time. The receivers have paid no rent on any of the disputed leases, except to Johnson, at any time. Dundas Simpson had charge of the mines at Carterville and J. C. Bryden at Carbondale, each with the title of division superintendent, during the fall of 1884, and the mines have been operated under the receivership until the present time. I have been in attendance at Carbondale and Carterville on an average of three times a month since December, 1884, and the company had representatives at its place of business at all times.

W. J. Allen testifies: Have been attorney for the Carbondale Coal and Coke Company for several years. The payment of rents on these leases was discussed in several conversations with the receiver and Mr. Blossom. Had some general, but no great, knowledge of the title to the leased lands. I told the receiver and Mr. Blossom that I did not think it safe for them to pay these rents without an order of the United States circuit court; that it was doubtful who were entitled to the rent, in whom was the title to the leased lands, and that I thought the only safe course was to get the order of the Circuit Judge. I heard of the leases to Mr. Hitchcock some time between the date when the decree was entered holding the leases forfeited and the date when the decree was set aside, and went to the records and found that several leases of that character had been recorded. Had no conversation with Mr. Hitchcock as to whom he represented in taking the leases. Had a talk with Mr. Waldron, that he had already leased to another company. It turned out that he didn't speak accurately. Heard during the argument of exceptions to the answer before Judge Treat that these men would be able to get their royalty by their mines being worked; that the Crystal Plate Glass Company were prepared to commence operations at once. My recollection is that Mr. Burr stated in the argument that the Crystal Plate Glass Company were willing or ready to take the leases and work the mines.

Wm. H. Warder testifies: Have set of abstracts of title to lands in Williamson County, Illinois. Have made abstracts of the titles to the lands in question, which are correct to the best of my knowledge. Abstracts attached and copied in evidence.

Walter Tregoning testifies: Am superintendent for the receiver of the Carbondale Coal and Coke Company. Have been engaged in the business of mining for over twenty years. I know the lands in controversy. Think it would be rather a difficult matter to tell how many tons an acre of these lands will yield. I cannot tell how many years the coal lands of the Carbondale Coal and Coke Company, other than the lands in controversy, will last. I don't think any man can tell. I think the lands in controversy are valuable to the Carbondale Coal and Coke Company, from their location being convenient

to the railroad and the natural grade to the Waldron land. The receiver's intention was to open a shaft on the Waldron land. The Priddy land lies a mile from the present openings of the Carbondale Coal and Coke Company; the Henderson and Joe. Waldron lands one and one-half miles, and the Catharine Waldron lands the same distance. We have not yet found any horseback that will diminish the coal more than one-half its thickness. There is one space of as much as fifty yards square that the impurities in the coal have rendered it worthless. Where the bed of coal is nine feet thick there would be ten or twelve thousand tons of coal in an acre of ground. The rule of computation is a ton of coal to every cubic yard. The Carbondale Coal and Coke Company has been in operation twelve or thirteen years, more or less. They have exhausted, I think, about one hundred and forty acres. An acre of ground would not yield a ton to the cubic yard if you take into consideration what is lost in pillars, air courses, roadways and shafts. The output of the company's mines for some years was very small. Don't know what the average output per day was, nor the output for the last eighteen months. We have only had one "squeeze" in the Carterville mines.

October 12th, 1886, the intervening petitioners amended their petition by making Emma Morgan, Israel Waldron and Mary Fowler, children of Catharine Waldron, parties petitioners, and alleging their ownership in a portion of the lands of which Henry Waldron died seized.

On the same day Howard A. Blossom, receiver, and William E. Burr, trustee, filed their answer to the last amended petition, denying its allegations.

On November 6th, 1886, the intervening petition was dismissed as to G. T. Johnson.

And on the same day a decree was entered in the cause finding that:

"On the first day of January, 1885, the four leases described in said petition, as made to the Carbondale Coal and Coke Company by Nancy Priddy, Thomas Waldron, Catharine Waldron and Tinsley Priddy, were and have ever since continued to be valid and in force; that the leases of the petitioners to said Ethan A. Hitchcock were made and delivered to him during the pendency of this cause, and that he paid no consideration for the same, and that he had notice of said proceedings, that said petitioners have [not] made application to this court for an order on said receiver to pay the royalties claimed to be due to them, and have not made legal demand for the same. Wherefore it is adjudged and decreed that the petition filed by said petitioners be dismissed; that all forfeitures of the leases to said Carbondale Coal and Coke Company declared or attempted to be declared by said petitioners, or either of them, be and are declared void, set aside and for naught held, and the said leases of the Carbondale Coal and Coke Company are hereby declared to be in full force. It is further ordered and decreed that the leases made by the petitioners to said Ethan A. Hitchcock for the premises in controversy be and the same are declared void, set aside and for naught held."

Petitioners and Hitchcock are also enjoined from interfering with

the rights of the Carbondale Coal and Coke Company, etc.; that there being doubt as to the ownership of the lands leased, the persons claiming have leave to present their claims to the court, etc.

William Henderson and other intervening petitioners were allowed an appeal, and E. A. Hitchcock a separate appeal.

ERRORS ASSIGNED BY WILLIAM HENDERSON ET AL. TO LAST DECREE.

1st. The court erred in granting a rehearing to the receiver of the Carbondale Coal and Coke Company.

2nd. The court erred in holding the four leases in controversy to have been at all times valid and in force, when, from September 15th to September 25th, 1885, there was a decree of record in the same court holding and decreeing them to be null, void and forfeited.

3rd. The court erred in finding that no legal demand had been made to pay the rents claimed to be due.

4th. The court erred in holding that it was necessary that the lessors, under the terms of the leases in controversy, should have applied to the court for an order on the receiver to pay the rent before taking measures to forfeit the leases.

5th. The court erred in dismissing the intervenors' petition.

6th. The court erred in holding that the leases of the Carbondale Coal and Coke Company are still in full force.

7th. The court erred in decreeing the leases made by petitioners to E. A. Hitchcock to be void, for naught held and set aside.

8th. The court erred in enjoining the petitioners from interfering with the Carbondale Coal and Coke Company and its receiver, Howard A. Blossom, in carrying on mining operations on the leased lands.

9th. The court erred in ordering the petitioners to present their claims for rent to the court by intervening petition.

10th. The court erred in holding that there was doubt and uncertainty as to who were the proper parties entitled to rents for the lands in controversy.

11th. The court erred in admitting evidence of Howard A. Blossom and Walter Tregoning as to the intentions of receiver, John W. Harrison.

12th. The court erred in ordering the intervening petitioners to pay the costs accrued in the cause and ordering execution to issue for the same.

ASSIGNMENT OF ERRORS BY ETHAN A. HITCHCOCK TO LAST DECREE.

1st. The court erred in granting a rehearing to the receiver.

2nd. The court erred in making him a party defendant in this cause.

3rd. The court erred in finding that the appellant paid no consideration for the leases made to him by the intervening petitioners, there being no evidence whatever upon which to base such finding.

4th. The court erred in finding that the appellant had notice of

the proceedings in this court prior to his having been made a party thereto, there being no evidence whatever upon which to base such a finding.

5th. The court erred in finding that the leases made by intervening petitioners to this appellant were made during the pendency of this cause; the cause, so far as this appellant was concerned, having been finally settled by the decree of September 15th, 1885.

6th. The court erred in decreeing the leases made by intervening petitioners to the Carbondale Coal and Coke Company to be in full force.

7th. The court erred in decreeing the leases made by the intervening petitioners to the appellant to be void, for naught held, and set aside.

8th. The court erred in enjoining the appellant from interfering with or impairing the rights of the Carbondale Coal and Coke Company and the receiver in carrying on mining operations on the leased premises.

BRIEF OF POINTS AND AUTHORITIES FOR WILLIAM HENDERSON ET AL., APPELLANTS.

The first error assigned is:

THAT THE COURT BELOW ERRED IN GRANTING A REHEARING AFTER ENTERING THE DECREE OF SEPTEMBER 15TH, 1885.

The decree was final, as far as all questions raised by the intervening petition were concerned.

It is true that at any time during the term in which a decree is entered it may be modified, altered or changed in any respect for error of fact or law; *provided* good reasons can be given for so doing.

Equity rule 88 provides that "every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person."

The petition presented for a rehearing in this cause was not in compliance with this rule. The petition (page 63 printed record,) is not verified by the oath of any person, nor does the petition state any facts constituting any ground for a rehearing.

The fact that the defeated parties were *surprised* by their defeat; that such defeat would injure them; that the party defeated was preparing to take such steps as a successful party would do, are surely not sufficient cause for granting a rehearing in a cause, for such things are the natural consequences of a defeat in any cause. As well might the intervenors say that a rehearing should *not* be granted because it would be a surprise to them, would injure them, and would interfere with plans they had proposed to enter upon concerning the property.

The other ground upon which a rehearing is asked, to-wit: That the decree was passed without notice to the trustees for the bondholders, is not true, as the record shows.

The decree was passed upon an intervening petition filed in a cause in which certain stockholders were plaintiffs, and the bondholders, through their trustees, were defendants; in which cross-bills were filed by the trustees of the bondholders against the stockholders. (See page 1 of printed record).

It is true the cross-bills were not filed until after the rehearing was granted, but the trustees were in court prior to that date. In the bill of complaint Charles Miller and William E. Burr, trustees of bondholders, are made defendants. (Pages 2 and 7 of printed record).

But the trustees of the bondholders were not necessary parties, and the rehearing should not have been granted merely to permit unnecessary parties to come in and be heard. They had, perhaps, the right to

interplead and be heard, but not to demand a rehearing merely that they might answer and have a hearing. The plaintiffs in the suit had no right to petition that the defendants might have an opportuninty to answer. In this case the trustees of the bondholders did not ask for a rehearing, but it was asked for them by their opponents—the stockholders. Upon these facts we insist that it was wrong in law and in practice to grant a rehearing of the cause as was done September 25th, 1885.

It is true that during the term, as was conceded, the court may amend, correct or vacate its decree for error of law or fact, *but there must be error shown.* It is not an *arbitrary* power in the court, and it must be preceded by certain forms, to-wit: A formal petition, sworn to, and which petition must point out the errors. No errors of law or fact are stated in the petition for rehearing that were of sufficient gravity to authorize a rehearing. Doss et al. vs. Tyack et al.; 14 How, 297.

In all cases where this court has sustained the right of a court to grant a rehearing during the term when the judgment, order or decree is made, the words "for proper cause," or "for good cause shown," are used. Bassett vs. U. S.; 9 Wall, 38.

It was perhaps true, formerly, that granting a rehearing was a matter of discretion with the court; but since the adoption of rule 88 this can no longer be true. The requirement of the rule, that the facts shall be stated in the petition, if not apparent on the record, would be absurd unless it followed that these facts should be of sufficient consequence to induce the chancellor to believe that he had made a wrong decree. In other words, the statements of such facts in a petition for a rehearing as would not, if proven, be sufficient to change, alter, modify or revoke the previous decree, should not cause a rehearing to be granted. And the sufficiency of this statement of facts, we think, should be reviewed by this court and determined. If the facts stated in the petition were all true, we contend, the same decree that was entered September 15th, 1885, should stand. If everything were true as stated in the petition for the rehearing, it should not change the decree.

The second error assigned by appellants, Henderson et al., is that:

THE COURT ERRED IN HOLDING THE FOUR LEASES IN CONTROVERSY TO HAVE BEEN AT ALL TIMES VALID AND IN FORCE, WHEN FROM SEPTEMBER 15TH, TO SEPTEMBER 25TH, 1885, THERE WAS A DECREE OF RECORD IN THE SAME COURT HOLDING AND DECREEING THEM TO BE NULL, VOID AND FORFEITED.

This assignment involves the question as to the effect of a decree or judgment of the court entered in the regular course of business during

the term, and what, in short, a decree of a court *is* during the pending term of court.

We take the position that a final decree entered during the term is an absolute determination of the facts and law involved in the controversy, subject to be changed or entirely obliterated at any time during the term for good cause shown; but while standing it is as binding as if never changed or expunged, and as if it had stood for years. In the case of The Washington, etc., Steam Packet Company vs. Sickels et al., 24 How 333, this court said: "The judgment rendered in that suit, while in force, and for the purpose of maintaining its validity, is conclusive of all the facts properly pleaded by the plaintiffs."

In the case of Habich vs. Folger, 20 Wall, 1, this court held that a judgment was conclusive upon a corporation and its receivers when they were parties and contested the claim.

It has also been held in numerous cases in this court that a final decree in chancery is as conclusive as a judgment at law; and both are conclusive on the rights of the parties. Sibbald vs. U. S., 12 Pet. 488; Shriver vs. Lynn, 2 How, 43; Washington Bridge Company vs. Steward, 3 How, 413; Pennington vs. Gibson, 16 How, 65; Nations vs. Johnson, 24 How, 195; Hornbuckle vs. Stafford, 111 U. S., 389; Bryan vs. Kennett, 113 U. S., 179.

Does a judgment or decree not take effect until the end of the term at which it is rendered? In many States this is regulated by statute. The United States statutes being silent on the subject, the judgment or decree takes effect from its date, or from the day on which it was rendered. No enrollment is necessary to give it validity. Bates vs. Delavan, 5 Paige, Chapter 303.

The third error assigned by appellants, Henderson et al., is that:

THE COURT ERRED IN FINDING THAT NO LEGAL DEMAND HAD BEEN MADE TO PAY THE RENTS CLAIMED TO BE DUE.

The decree of the court on this point is: "That said petitioners have made application to this court for an order on said receiver to pay the royalties claimed to be due to them, and have not made legal demand for the same."

We presume that it was intended in this decree to say "that said petitioners have made" *no* "application," etc., for if it was stated that petitioners "had made application," it would not be true in fact.

We do not understand, and are not informed, upon what theory the court held that no legal demand was made for the rent due. There is no question that a written demand was made upon the receiver to pay the rent under each lease in controversy. This is proven by the evi dence of witnesses, with copies of demand attached, and is not dis-

puted. (See evidence of Joseph Waldron, page 108 of printed record, evidence of William Henderson, page 116, and evidence of James M. Washburn, page 120).

If the finding of the court is based upon the theory that the receiver was not the proper person upon whom the notice should have been served, we insist that the finding was wrong in law. The order appointing John W. Harrison receiver, (page 21 of the printed record,) vests him "With the usual powers of receivers in equity," "and it is further ordered that the said defendant, the Carbondale Coal and Coke Company, assign, transfer and deliver over to said receiver, all and singular the property, real and personal, of or belonging to said corporation, and that said defendant, the Carbondale Coal and Coke Company, its officers and agents, forthwith surrender and deliver to said receiver all the assets, materials, tools, machinery, fixtures, effects and property of every nature and kind, of, or belonging to, said defendant corporation, and also all money, notes, drafts, bills of exchange, checks, or other evidences of indebtedness due and owing to said corporation, as well as all books of account, accounts, deeds, bonds, mortgages certificates of stock, vouchers, and papers of every nature belonging to said corporation; and it is further ordered that said receiver continue the management of the business of the defendant corporation until further order of the court."

Under this order there was nothing left in the corporation but its mere existence. Life was its sole inheritance. *All* its property was vested in the receiver as fully as if it had been conveyed by deed or other absolute conveyance. This order was in full force when this rent became due. The receiver alone had the control of the leases. It was his duty, and his *alone*, to protect them. The court had invested him with full power to do this. It had ordered him to "continue the management of the business of the defendant corporation until further order of the court." An essential part of the management of the business of the corporation was to protect its property from forfeiture or loss. He was given ample notice, which he utterly neglected. The lessors could not give notice to the corporation, for the corporation had no property in the leases, and all its control and power over them were suspended by order of the court. They could not be required to give notice to the bondholders or their trustee, for the bondholders and trustee were in privity with the corporation, and the lessors could no more be required to give the trustee of the bondholders notice after than before the appointment of the receiver. The bondholders had a mere lien.

The lessees, under the conditions in the leases, had the election either to pay the rent agreed upon or to permit the leases to be for-

feited. The lessors had the election to collect the rent or to make a written demand for it, and if the rent was not then paid the leases by their own terms became forfeited. This election was not lost to either party by the appointment of a receiver. That appointment could not make a new contract for the parties. The right to pay the rent or permit the leases to lapse was transferred from the corporation to the receiver, but in no way were the rights of the lessors affected by this transfer. Consequently of no one but the receiver could the lessors demand the payment of the rent.

In appointing a receiver over real property the correlative rights of landlord and tenant are not changed. The court, through its receiver, takes upon itself all the obligations, burdens, powers and rights existing between the landlord and tenant. Com. vs. Harrington, 11 H. R. Ir., 127.

The court must observe and care for the rights of all contracting parties, as well as the rights of the party whose property and interests have been taken in charge, else a premium would be placed on insolvency.

The fourth error assigned by appellees, Henderson et al., is that:

THE COURT ERRED IN HOLDING THAT IT WAS NECESSARY THAT THE LESSORS, UNDER THE TERMS OF THE LEASES IN CONTROVERSY, SHOULD HAVE APPLIED TO THE COURT FOR AN ORDER ON THE RECEIVER TO PAY THE RENT BEFORE TAKING MEASURES TO FORFEIT THE LEASES.

The finding of the court on this point was: "That said petitioners have made 'no' application to this court for an order on said receiver to pay the royalties claimed to be due to them."

Appellants claim that they were not required to make application to the court for the payment of this rent.

The lessors had two remedies. One was to apply to the court for an order on the receiver to pay the rent, the other was to make a written demand for the rent. They chose the latter remedy. For the latter purpose no application to the court was necessary. The lease became forfeited by its own terms. But to enforce this forfeiture and give it legal effect, the lessors did intervene and ask the court to declare it forfeited. In effect the intervening petition was but a notice to the court of their election to allow the leases to become forfeited, asking that it be so entered of record. The circuit court could, no more than an individual, make a new contract between the parties, and say that the forfeiture should not be created because the property was in the hands of the court. Because one party to a contract becomes insolvent and his property is taken possession of by the court, is no reason why a contract previously made between them should be

treated differently than if both had remained solvent. It is not the fault of the solvent party to the contract that the other became insolvent.

Had the Carbondale Coal and Coke Company managed their business in such a manner that they could have promptly paid their debts, there could be no question that the lessors could have caused the forfeiture of the leases in the manner in which they did. Are they in any worse condition because the lessees, by bad management, became insolvent? Did this insolvency take away from the lessors the right given them in their contract to make the written demand and thus cause the leases to become forfeited? The court said it did by the terms of its decree, when it said "that said petitioners have made no application to this court for an order on said receiver to pay the royalties claimed to be due to them," giving this as a reason why the leases should not be declared forfeited.

It is held that when a receiver has been appointed over a leasehold interest in land, that the landlord is at liberty, after the expiration of the leases, to re-enter without the leave of the court. Britton vs. McDonnell, 5 Ir. Eq., 275.

In this case the leases become terminated by non-payment of the rent. The attention of the court is especially directed to the terms of the leases as shown in the lease of Thomas Waldron, page 35 printed record, this provision being in the same words in each lease: "And it is furthermore agreed, that if at any time said party of the second part, its successors or assigns, shall be in default and fail to pay any sum due for rent or royalty, as aforesaid, for the term of ten days after written demand therefor by the party legally entitled to demand and receive the same, the party of the second part, its successors and assigns *shall forfeit all right to mine in or otherwise hold or enjoy the tract or surveyed subdivision of land for and on acconnt of which unpaid sum shall have become due*, and after such default and demand as aforesaid, the party legally entitled to the life estate or fee simple ownership of said land may at once, or at any time thereafter, enter into the exclusive possession thereof," etc.

The court will observe that the mere fact that a demand had been made in writing and ten days had elapsed thereafter, of itself forfeited the leases and all rights under them. It is no answer to this forfeiture to say that it was waived by the lessors when they permitted the rent to become in arrear and sometimes collected it by law, for the reason that the rent being in arrear did not forfeit the leases. It required the *demand in writing* and *the lapse of ten days thereafter* to create a forfeiture, and no demand, prior to 1885, had ever been made in writing.

The fifth error assigned by intervening petitioners, Henderson et al., is that:

THE COURT ERRED IN DISMISSING THE INTERVENORS' PETITION.

This brings before this court all the facts and evidence in the case, and upon that we claim the last decree is manifestly wrong. The indisputed facts are that the rent due by the express terms of the leases on January 1st, 1884, was not paid; that written demand was made for the same upon the receiver, and no tender or offer to pay the same was ever made until after the intervening petition was filed; that no possession of any kind was ever taken of the leased property, nor work of any kind done thereon by the lessees; that written demand for payment of rent was also made on Edwin Harrison, a principal stockholder of the Carbondale Coal and Coke Company, the petition showing that he owned 2,630 shares out of 5,960, and the evidence of Washburn, (page 121 printed record,) showing that he was a "kind of general superintendent of the business of the company;" that there is a bed of coal under this leased land from eight and one-half to nine and one-half feet thick readily accessible, being from 30 to ninety feet under the surface, and which in all probability will produce from 6,000 to 12,000 tons of coal per acre—an average of 9,000 tons; that at a royalty of five cents per ton, the amount agreed to be paid, this would produce to the lessors $450 per acre, without material injury to the surface of the land.

There is little or no dispute as to the facts, and the only question is as to the law and its application to the facts.

Counsel for receiver contend that the forfeiture of the leases would be injurious to the property of the company, and therefore it should not be enforced. This is not one of the cases where the party comes into court with clean hands, asking equity. The petition filed by the stockholders of the company, the answer of the trustee, the evidence and all the circumstances, show a state of facts not entitling this Carbondale Coal and Coke Company to any favor from a court of equity. The foundation of the whole proceeding is the insolvency of the corporation, and the allegations and evidence show a criminal breach of trust on the part of the company and inexcusable negligence on the part of the trustee of the bondholders. The original bill alleges, and the trust deed shows, that the company agreed to place five cents a ton of all coal mined in the hands of the trustee of the bondholders as a sinking fund. The bill alleges, page printed record, and states that only $6,000 was so placed. The evidence of Winning, not disputed, page 110 printed record, is that for the six years, from 1880 to 1885 inclusive, there was mined 907,272 tons of coal. He also stated they had worked the mines for about fifteen years. But, from

the date of the leases, 1873 to 1886, would be only thirteen years, we will say the mines were worked twelve years. The average output from 1880 to 1886 was 181,664 tons. One witness, however, Tregoning, says, on page 158 of printed record, that the output a large portion of the time was very small. Place the average output per year for the twelve years at 150,000 tons, and we have the total yield, 1,800,000 tons. At five cents per ton, this would place $90,000 in the sinking fund. The evidence fails to show how many town lots were sold. But here is $6,000, instead of $90,000 that the company should have had in its sinking fund to prevent insolvency, and because the company did not pay it in as it agreed to do, and the bondholders and their trustee failed to collect it, they come into court and ask its protection. We claim they are entitled to no favors, and that these lessors are not compelled, and in equity cannot be compelled, to await the slow, uncertain, delusive and dilatory action of a corporation so unreliable and regardless of its promises. The lessors did not make written demands, but collected their small rents of one dollar per acre as best they could, so long as there was a hope that the company would soon reach their lands and produce the large revenue they would be entitled to when coal was being taken therefrom. But when the company announced that they were insolvent, and that they had in nothing complied with any of their agreements, was it a great wrong to this corporation that the lessors did not sue for their rent or go into the circuit court and ask an order on the receiver for its payment instead of serving the written demand, and thus causing the leases to lapse? After the written demand was made the receiver had ample time to apply to the court, if he so desired, and obtain an order to pay the rent. Not having done so, it was his own laches that caused the forfeiture. Forfeiture is, however, the wrong word to use to express the termination of these leases. They did not become forfeit, as the leases were not lost for a fault, offense or crime. The leases simply lapsed for non-payment of the rent as agreed upon, and the property reverted to the original owners.

The sixth error assigned by intervenors, Henderson et al., is that:

THE COURT ERRED IN HOLDING THAT THE LEASES OF THE CARBONDALE COAL AND COKE COMPANY ARE STILL IN FULL FORCE.

On this point the court said in its decree: "The four leases described in said petition * * were, and have ever since continued, to be valid and in force."

The arguments heretofore offered apply to this error, and need not be repeated.

The holding of the court is contrary to the terms of the leases themselves. The decree is not an adjudication upon the facts, but a decla-

ration that the service of the written demand upon the receiver, and the failure to pay within ten days thereafter, does not terminate the leases. It is a declaration by the court that the contract made by the parties to it shall not be enforced. The court in its findings gives reasons for not enforcing the contract which we think are not founded on the evidence, and if so, are insufficient to justify the decree.

The seventh error assigned by intervenors, Henderson, et al., is that:

THE COURT ERRED IN DECREEING THE LEASES MADE BY PETITIONERS TO E. A. HITCHCOCK TO BE VOID, FOR NAUGHT HELD AND SET ASIDE.

These leases were made while a decree was properly made and entered of record relieving the leased land of the cloud caused by the former leases. Is it the law that when a decree is made and entered in a court having jurisdiction of the subject matter and person that all persons are compelled to wait until the end of the term to see if the court will not set it aside? This decree was entered in September, but the record shows that it was still the June term of the circuit court, and this court will take judicial knowledge that the United States circuit court of the Southern District of Illinois had two sessions in each year, to-wit: January and June, and that the June term might continue until January following. All business, therefore, concerning property in litigation must be suspended for six months or the risk assumed that the court will set aside its decree. Such a holding would materially interfere with the commerce of the nation. No wrong is charged or proven against the lessors or Hitchcock, the lessee. They were each informed of the decree of September 15th, and had every reason to believe it to be final. No motion to set aside or modify the decree had been made, or if made, when one lease was executed the parties had no knowledge of it. Wherein, then, were they so much at fault that an innocent, *bona fide* contract between them should be arbitrarily set aside? If the court made a wrong decree, should innocent parties suffer? Even were it true that the leases of the Carbondale Coal and Coke Company were still in force between September 15th and 25th, 1885, when the decree was still in force holding them forfeited, what power or authority had the circuit court to declare the leases of Hitchcock void, and to decree that they should be set aside and for naught held? The validity of these leases was not in question. The only question concerning them was whether or not they gave rights to mine coal superior to the rights of the Carbondale Coal and Coke Company. These leases of Hitchcock were surely good contracts between the parties and between all persons but the receiver and the Carbondale Coal and Coke Company, yet the court declared them to be void generally, and ordered them set aside and for

naught held. The doctrine of *lis pendens* against a *bona fide* purchaser without notice, is considered a hard rule and is not favored. Hayden vs. Bucklin, 9 Pai, 511; Sorrell vs. Carpenter, 2 P. Wm's, 483; Ludlow vs. Kidd, 3 Ohio, 541. Yet the rule was enforced here without mercy.

The eighth error assigned by intervenors, Henderson et al., is that:

THE COURT ERRED IN ENJOINING THE PETITIONERS FROM INTERFERING WITH THE CARBONDALE COAL AND COKE COMPANY AND ITS RECEIVER, HOWARD A. BLOSSOM, IN CARRYING ON MINING OPERATIONS ON THE LEASED LANDS.

Whatever may have been the finding of the court on the main issue, we insist that this injunction was wrongly granted. The receiver was not in possession of the leased lands; he was not mining thereon; no one had offered to interfere with him; there was no ground whatever for an injunction.

The ninth error assigned by intervenors, Henderson et al., is that:

THE COURT ERRED IN ORDERING THE PETITIONERS TO PRESENT THEIR CLAIMS FOR RENT TO THE COURT BY INTERVENING PETITIONS.

This order in effect declared that the lessors had no right, power or authority to make the written demand. The court made a new contract for the parties. The receiver claimed that he could not pay the rent because he did not know to whom to pay it. For years previous to 1884 rent had been paid to these same parties by the company without question, and suddenly they discovered that they did know who was entitled to it. Judge Allen advised the receiver not to pay it, as their title to the land was in doubt, yet the evidence shows that Judge Allen had for years been counsel for the company and had never discovered this doubt until after a forfeiture of the leases. Why did not the company contest Henderson's right to receive rent when he brought suit for it in 1882 and 1883? (See evidence of Blossom, receiver, page 135 printed record). Why did they pay Tinsley Priddy his rent, after he sued for it in 1882 and 1883, if he was not entitled to it, or if it was in doubt? (See same page). The company paid these persons in 1882 and 1883, and yet in 1884 a doubt arose as to whether they were entitled to the rent or not. But this doubt never was heard of until the forfeiture of the leases was claimed under the contract. The lessors had become tired of suing for their rent, and had determined on a forfeiture, and at once a doubt arose about their right to receive rent at all. The court will observe that all this is the testimony of their own witness—the receiver of the company. This receiver further says, (page 134 printed record): "Some of the Tully heirs took theirs out. Catharine Waldron was apparently never in a hurry. She allowed it to run along for a year or two at a time

without pressing the subject." Was there any doubt expressed then as to the right of Catharine Waldron to receive rent? On page 133 printed record the receiver swears: "The records of the company show that Catharine Waldron has received in money $839.30, and the rentals for 1882, 1883 and 1884 were paid into the court by me. William Henderson, I get from the same source, has received $880; the rental for 1884 was paid into the court. Tinsley Priddy received $1,540; the rental for 1884 has been paid into court. The heirs of Thomas Waldron, which is the property claimed by Joseph Waldron in this controversy, have received $440; the rental for 1884 was paid to the court."

Now, if there was "a doubt" as to who should receive these rents, why was it not discovered before these large sums of money had been paid out? Why did not Judge Allen, the counsellor of the company from the beginning, never discover the "doubt" until after the lessees' interest in the property became endangered? Again, written demand was made on the receiver January 1st, 1885, by William Henderson for the rent of 1884 due him on his land, $80, (page 51 printed record, exhibit M); by Joseph Waldron on the same date for balance of his rent, $33.34, (page 46 printed record, exhibits H and N, and O, pages 50 and 51). Catharine Waldron made written demand on same date for $315 due her for rents of 1882, 1883 and 1884. (See exhibit K, page 48; Q, page 52; S, page 54, and T, page 55 printed record). Sarah Priddy made written demand for her rent, $140, on February 2nd, 1885. (See exhibit R, page 53 printed record).

The evidence of the parties and Washburn proves the making of each of these written demands by mail in registered letters, and the receipt of none of them is disputed.

After the receipt of these written demands it seems that Judge Allen, the counsel of the Carbondale Coal and Coke Company from its institution, was consulted, and he advised that the rents be not paid. (See evidence of Wm. J. Allen, pages 138 and 139 printed record).

Judge Allen says: "I have been attorney for the corporation several years. I do not recollect how long—and of the receiver and all of his appointments."

The original bill is signed by William J. Allen, solicitor for complainants, and all the proceedings in this case seem to have been conducted by William J. Allen, and yet he never had a "doubt" of the right of the intervening petitioners to receive their rents until the written demand was about to be succeeded by a forfeiture of the leases. He swears—on page 139 printed record: "I am sure I said to the receiver and to Mr. Blossom that I did not think it safe for them to pay these rents or claims for royalty without an order of the United

States circuit court; that it was doubtful who were entitled, what parties were entitled to the rents, in whom the title was to the lands leased, and I thought their only safe course was to require these claimants to get an order from the Circuit Judge, and that would be a complete protection to them." And further on, same page: "I think, I am satisfied, that I told the receiver on several occasions that in view of what I knew to be the large number of interested parties in the property, that the only safe course was to require in every instance an order of court for the payment of money."

Yet neither Judge Allen, the receiver, nor any one else, ever condescended to inform the lessors of this "doubt." They permitted the lessors, in ignorance of this determination, to believe they did not intend to pay or to claim any farther rights in the property. Were not the lessors justified in believing, that the company being insolvent and the receiver neglecting to make any answer to their demand for rent, that it would be useless to apply to the court for an order, and their only remedy was to make the written demand and let the leases come to an end? No tender of money nor offer to deposit money with the court was ever made or thought of until after the intervening petition was filed demanding a forfeiture. Then the receiver and the company were very anxious to pay. But in the meantime the lessors—the parties suffering for want of their money—were in entire ignorance of all "doubt" as to their rights to receive rent. As a conclusive circumstance showing that this "doubt" was trumped up at the last moment for the purpose of inducing the court below to forego and not enforce the forfeiture, read the evidence of Howard A. Blossom on page 131 of the printed record. He there swears:

"The difficulties were with respect largely to the Waldron lands, those of Catharine Waldron and the Tulley heirs and Henderson, well, not particularly with respect to Henderson, because we had discovered he had made his title good by several suits against the company in previous years. * * * His advice, (Judge Allen's), was not to do anything about it; not to pay them, but let these people go in and get the necessary orders."

Now it turns out that the only "doubt" was about the Catharine Waldron land, to whom they had been paying rent for ten years without complaint, and yet because of this doubt they refused to pay the other lessors, as to whose right to receive it there was *no* doubt in fact.

Where there was by the contract a clause of forfeiture in the event of a failure to pay the rent after written demand, was it not the duty of the receiver to apply to the court for an order authorizing him to pay the rent and thus prevent the forfeiture? Were the persons who had the right to declare the forfeiture required to go to the court and beg a privilege which they had by their contract?

The decree so holds, when it declares it to be their duty to apply to the court for the payment of their rent. We do not believe the law to have gone so far as to deprive the contracting parties of all their rights under the contract where one party has become insolvent unless they appeal to the court for the privilege of enforcing the contract. We concede the law to be that where money is sought from corporations whose property is in the hands of the court, that the persons seeking it should apply to the court for an order; but where other rights are given than the mere payment of money such rights may be enforced without the leave of the court. But where the action of the court is necessary to *enforce* the right, it must be done by or with the consent of the court having charge of the property; and the receiver being appointed for the purpose of preserving and caring for the property, it is his duty, and his alone, to take such steps as may be necessary to preserve it. We therefore insist that the receiver himself, knowing as he did, or should have known, of the condition of forfeiture in these leases, should have applied to the court for leave to pay the rent; and if there was in fact any doubt as to who should receive it, that he would have summoned Catharine Waldron into court to submit her title to inspection. This would have been the honest, straightforward, business way of settling the question. Or, if there had been any real desire to do right in the matter, Judge Allen could have given notice, or directed the receiver to give notice, to the parties claiming the rent that they must produce their titles for investigation; and if there was still a doubt, that the United States circuit court should then be applied to and the titles there investigated and settled.

But we take the position in this case that it was the duty of the receiver to pay the rent to the intervening petitioners; that no order of the court was necessary before making such payments, and if such an order was advisable, that it was the duty of the receiver to apply for and obtain such order, and not the duty of the lessors. Balfe vs. Blake, 1 Irish, Ch. N. S. 365; Walsh vs. Walsh, 1 Irish, Eq. 209; High on Receivers, S. 632; McCartney vs. Walsh, Hayes, 29, note b. If this real estate had been in the *actual* possession of the receiver, this would have been the possession of the court, and in such case the rule might be different. But there was no such *actual* possession and no interference with the rights or power of the court in making the demand of the receiver. The receiver was also the only proper person on whom the demand could be made. By his appointment the interests and rights of all the creditors, shareholders, bondholders and other person having interests in or with the Carbondale Coal and Coke

Company were taken charge of by the court. Delaney vs. Mansfield, 1 Hog. 234.

The receiver should apply to the court for advice and instruction whenever it may be advisable; and in this instance, when the demand was made upon him for the rent, he should within the ten days given in the lease have applied to the court for leave to pay it; or, if there was real doubt as to the parties entitled, he should have asked for leave to give them notice to come into court and produce their titles. *In re* Van Allen, 37 Barb, 225; Smith vs. N. Y. Con's. Stage Co., 28 How. Pr. 377; Curtis vs. Leavitt, 1 Ab. Pr. 274; Lattimer vs. Lord, 4 E. D. Smith, 191; Cammack vs. Johnson, 1 Green, Ch. 163; People vs. Life Ins. Co., 79 N. Y. 267.

All the rights, interests and property of the company, its stockholders, mortgagees, creditors and bondholders having been vested in the receiver by virtue of his appointment as such, he was the proper person on whom to serve the demand. Baker vs. Adair, 32 Ill. 79; Gravenstine's Appeal, 49 Pa. St. 310; Corrigan vs. Trenton, etc., Co. 3 Halst, Ch. 489.

The functions of all the other officers of the company were suspended while the property was in the hands of the receiver. The court would not permit its receiver to be interfered with in his management of the estate. All control was taken from the officers of the company and vested in the court. Then, the receiver was the proper person, as the agent of the court, upon whom to serve the notice, and it was his duty, as agent, to bring it to the attention of his principal, the court. If he was guilty of laches in this respect, the lessors should not be required to suffer for it.

The tenth error assigned by intervening petitioners, Henderson et al., is that:

THE COURT ERRED IN HOLDING THAT THERE WAS DOUBT AND UNCERTAINTY AS TO WHO WERE THE PROPER PARTIES ENTITLED TO RENTS FOR THE LANDS IN CONTROVERSY.

The decree of the court on this subject is as follows:

"And it appearing that the said receiver has deposited in the registry of this court a sum of money sufficient to satisfy all accrued royalties provided in said leases for the benefit of whom it may concern, and that there is doubt and uncertainty as to the proper parties entitled to said fund," etc.

Now we claim that there is not a shadow of evidence upon which to base this finding as to the claims of Henderson, Joseph Waldron or the Priddys. There was some controversy as to the rights of Catharine Waldron, but never any doubt as to the right or title of the other parties; and as to all others the finding was manifestly wrong. The evidence showed no shadow of doubt, except in the case of Catharine

Waldron, and the company and the receiver were estopped from denying Catharine Waldron's right to receive by long acquiescence and the fact that the lease was made directly with Catharine Waldron herselt, and they could not deny her title or right to receive it. There is no evidence that any other person ever claimed any interest in the leased lands or claimed any rent therefor. William J. Allen, the attorney for the company, swears, page 138 of printed record, in answer to questions asked concerning his knowledge of the condition of the titles to the lands: "I had some general knowledge, no great knowledge, but some general knowledge and information as to the state of the title on the part of these claimants or petitioners." Yet with this slight knowledge he advises the receiver not to pay any rent without making any investigation or inquiry whatever and concealing the fact from the persons entitled to rents that the receiver had determined not to pay them, but that they must apply to the court.

The eleventh assignment of errors by intervenors, Henderson et al., is that:

THE COURT ERRED IN ADMITTING EVIDENCE OF HOWARD A. BLOSSOM AND WALTER TREGONING AS TO THE INTENTIONS OF RECEIVER, JOHN W. HARRISON.

The evidence of Blossom on this point will be found on page 134 printed record. The question was asked him: "State what you know, if anything, concerning the intentions of your predecessor, Mr. Harrison, as receiver, to operate these properties in dispute here for the purpose of extracting coal."

"A. It was Mr. Harrison's intention," etc.

The evidence of Walter Tregoning on this point is found on page 152 printed record.

We think no argument is required to convince the court that such evidence as this is utterly irrelevant, immaterial and valueless, and yet it probably had some effect upon the mind of the chancellor. No one could swear to the intentions of another. If Harrison had any such intentions, he was the one to swear to it. But we contend that any such intention, if it existed, without any effort or attempt to carry it out, would be of no value. There is no doubt, however, that the evidence had an influence on the mind of the court.

The twelfth assignment of errors on the part of intervenors, Henderson et al., is that:

THE COURT ERRED IN ORDERING THE INTERVENING PETITIONERS TO PAY THE COSTS ACCRUED IN THE CAUSE AND ORDERING EXECUTION TO ISSUE FOR THE SAME.

While it may be true that costs are largely within the discretion of the court, yet we believe it to have been an inequitable exercise of this

discretion to order the intervenors to pay all the costs in this case, even under the decree rendered.

The intervenors surely did no more than they had a right to do, to-wit: to come into the court asserting their rights and asking an adjudication of the same. That they were not successful in obtaining all they sought, is not a good reason why they should pay all the costs. Had a tender of the rent been made, or the amount deposited in court before the filing of the intervening petition, there might be some justification in decreeing that they should pay the cost, but no such thing was done.

The intervenors were never informed that a doubt existed as to their rights to receive rents, no money was ever offered them, none deposited, and they had no means of knowing what were the purposes or intentions of the company or its receiver until after they filed their petition. Were they at fault, guilty of negligence or wrong, in filing it under the circumstances?

Respectfully submitted,

W. W. BARR,
Attorney for Wm. Henderson, et al.

Miles Fred T. Gilbert,
of counsel.

BRIEF AND ARGUMENT FOR ETHAN A. HITCHCOCK, APPELLANT.

The first error assigned by appellant, Hitchcock, is that:

THE COURT ERRED IN GRANTING A REHEARING TO THE RECEIVER.

In addition to the argument presented on this point by counsel for intervenors, Henderson, et al., we desire to urge this further consideration, that if such rehearing is granted in any case it must be with the express or implied reservation, or condition, that such rehearing shall not affect or interfere with any rights or interests acquired in the subject matter of the controversy prior to the granting of the rehearing. If this reservation or condition was implied in the order granting a rehearing in this case, this appellant is content. But if not so implied, he urges the error in granting it. The decree was absolute and binding when made. A decree takes effect immediately after being pronounced by the court. Its enrollment adds nothing to its force. Bates vs. Delavan, 5 Paige, Ch. 303; Winans vs. Durham, 5 Wend, 47; Butler vs. Lee, 3 Keyes, 73.

So far as the appellant is concerned, the suit was not pending involving the validity of the Carbondale Coal and Coke Company leases when he leased from the intervenors. No motion had been made for a rehearing; the decree settled all rights and removed all obstacles in the way of his leases; and he was given to understand that no farther proceedings in the matter would be had. The receiver was guilty of laches in not moving at once for a rehearing, and he shall not now be permitted to perpetrate a wrong on this appellant that could have been prevented by the exercise of due diligence. The benefit of *lis pendens* is lost by negligence or delay. Gossom vs. Donaldson, 18 B Monroe, 230; Preston vs. Tubbin, 1 Vern, 286; Clarkson vs. Morgan, 6 B. Monroe, 441; Watson vs. Wilson, 2 Dana, 406.

In the case of Indiana, etc., R. R. Company vs. Bird, 116 Ind. 217, the court held that a judgment should not be opened for the correction of a mistake where the rights of third parties had intervened since the entry of the judgment, the party affected by the exercise of due dilligence having had the opportunity of causing the mistake to be corrected before other rights had been acquired.

The second assignment of errors made by appellant, Hitchcock, is that:

THE COURT ERRED IN MAKING HIM A PARTY DEFENDANT IN THIS CAUSE.

If, as was urged, the appellant acquired rights in the property in controversy *pendente lite*, he had a right to have those rights investigated in a legal proceeding, and had the right to a trial by jury as to

those rights, and also as to their effect upon the property. The summary process by which he was compelled to come into this court and assert his claims deprived him of one the rights guaranteed to him by Article VII. of amendments to the Constitution of the United States.

The third error assigned by appellant, Hitchcock, is that:

THE COURT ERRED IN FINDING THAT THIS DEFENDANT PAID NO CONSIDERATION FOR THE LEASES MADE TO HIM BY THE INTERVENING PETITIONERS.

The finding is as follows in the decree, page 160 printed record: "That the leases of the petitioners to said Ethan A. Hitchcock were made and delivered to him during the pendency of this cause, *and that he paid no consideration for the same*," etc.

The evidence to sustain this finding must have been gained from the inner consciousness of the court alone, for the evidence is entirely silent upon the subject.

In the answer of Hitchcock, page 89 of the printed record, he alleges that "he now holds said leases, and intends to hold and assert the same as valid existing leases of the same, obtained by respondent in good faith, *upon the payment of a valuable consideration* after the rights and interests and all claims of the Carbondale Coal and Coke Company had by this court been declared," etc.

Again, on same page, Hitchcock alleges in his answer: "Respondent relies upon his leases obtained from the petitioners aforesaid in good faith *and for a valuable consideration* as complete and perfect bars," etc.

To the allegations of this answer no reply nor denial in any form was ever made. In the amended answers of Burr and Blossom, and in the amended petition of Henderson et al., no charge is made that Hitchcock did not obtain his leases upon a valuable consideration paid for the same. (See pages 81, 82 and 83 printed record).

Consequently the allegations in the answer of Hitchcock, that he *did* pay a valuable consideration for his leases, stands alone and uncontradicted, and is not questioned nor disputed by either pleadings or evidence. How then could the court find "that he paid no consideration for the same"? This is one of the most important findings of the court, without which the decree can not stand, and yet there is no possible ground or cause for so finding. We challenge the production of a single denial of the allegations in Hitchcock's answer on this point, either in the pleadings or evidence. Without evidence of this important fact could the decree stand. If it is not contradicted in either the pleadings or evidence, it must be presumed that appellant, Hitchcock, did pay a valuable consideration for his leases. If he did, then the court deprived

him of his property in the same without due processs of law by declaring them void in this summary manner.

The fourth error assigned by appellant, Hitchcock, is that:

THE COURT ERRED IN FINDING THAT THIS APPELLANT HAD NOTICE OF THE PROCEEDINGS IN THIS COURT PRIOR TO HIS HAVING BEEN MADE A PARTY THERETO; THERE BEING NO EVIDENCE WHATEVER UPON WHICH TO BASE SUCH A FINDING.

Here again the court has made a finding without any evidence whatever to support it.

It is true, in this case, Burr, trustee, in his amended answer, page 82 printed record, says: "But this defendant charges that by said leases the said E. A. Hitchcock has acquired no legal or equitable interest in the lands described in said leases, for the reason that said Hitchcock had full notice of the institution and pendency of the proceedings in this cause from their very inception, and was a party in interest thereto although not appearing in the record of said proceedings as a party in interest; that he had full notice of the proceedings which led to the setting aside of the decree made and set aside by the court."

Receiver Blossom makes similar assertions in his amended answer, page 83 printed record. In fact, he uses the same words.

These allegations in these answers are made only that the court may have a basis upon which to make Hitchcock a party to the action.

The order of the court was, on page 85 printed record: "That he be summoned before the court as such defendant, and be required to make such answer *to said intervening petition* as the law and facts demand."

Hitchcock made answer to this "amended petition." No charge was made in it "that he had notice of said proceedings." It was not, therefore, a matter in issue in the case in any way. It was not hinted at, even, in the evidence. How, then, could the court find as a fact something that was not referred to in the pleadings or evidence? This was also an important finding—one that was a foundation stone upon which the decree was built—and yet it was merely sand. The court could not find it from the evidence, for it was not in the evidence. The chancellor could not find it from the pleadings, for it was not in the pleadings. Take away this finding, and what is there left to sustain the decree? Hitchcock was not a party to the suit until he was brought in upon the application of Blossom after the leases were made to him. Where is there a word of evidence to indicate that he ever heard of the case before this time?

The fifth assignment of errors by appellant, Hitchcock, is that:

THE COURT ERRED IN FINDING THAT THE LEASES MADE BY INTERVENING PETITIONERS TO THIS APPELLANT WERE MADE DURING THE PENDENCY

OF THIS CAUSE; THE CAUSE, SO FAR AS THIS APPELLANT WAS CONCERNED, HAVING BEEN FINALLY SETTLED BY THE DECREE OF SEPTEMBER 15TH, 1885.

The allegations as to the making of these leases is found in the answer of appellants, pages 88 and 89 printed record, as follows: "That he having been informed that said decree of September 15th, 1885, declaring null and void the leases made to the Carbondale Coal and Coke Company had been made and entered in the United States circuit court, and having previous to that time had some negotiations with the lessors that if such a decree was entered that he would lease said lands and at once commence mining on the same, he did lease the lands of William Henderson, Joseph Waldron, Catharine Waldron and Tinsley Priddy.

In the amended petition it is alleged by Henderson et al.: "That on the 17th of September, 1885, Joseph Waldron leased his lands to appellant; that William Henderson leased his to appellant, September 21st, 1885; that on the same day Catharine Waldron, Henry Waldron, and David Waldron, Jr., leased theirs; that on September 26th, 1885, but before the parties learned of the rehearing having been granted, Catharine Waldron and Henry Waldron leased theirs to appellant. None of these allegations are anywhere denied in the pleadings, nor are they questioned or doubted anywhere.

The evidence concerning the making of these leases is as follows: Evidence of Catharine Waldron, page 98 printed record:

"Interrogatory 19th by same. State whether at the time you and Henry Waldron leased said lands for mining purposes to E. A. Hitchcock you were informed and believed that your lease to the Carbondale Coal and Coke Company had been adjudged and deemed forfeited, null and void, and whether you had any information that said decree had been opened and a rehearing granted.

"Ans. 19th. I understood that the lease of the Carbondale Coal and Coke Company was null and void and I had not then heard that the case was reopened."

Evidence of William Henderson, page 117 of printed record:

"Ans. 13th. I did lease my lands to E. A. Hitchcock. I signed the lease about three days after the forfeiture was rendered in the month of September, 1885, before I heard of the rehearing of the case."

This is all the evidence in the record concerning the making of the leases. Burr, the trustee, and Blossom, receiver, admit in their amended answers the making the leases to appellant on the dates mentioned.

The finding of the court, therefore, must have been based upon the law alone—that the leases being made during the term of court when the decree was entered—they were made during the pendency of the suit, although made after the final decree was entered on September 15th, 1885.

While we admit the right of a court to grant a rehearing at any time during the term of court in which a decree is made, yet we deny that a suit can be *pending* after a final decree is entered and before it is set aside, so far as it may affect the interests acquired in good faith by third persons in the property in controversy. Any other construction of the law would place property in litigation out of the market until the statute of limitations had become a bar to a reversal of the judgment or decree. So far as it affects the property in litigation it can not be perceived that there is any difference between the granting a rehearing during the term and reversing the decree for error after the term. Each is a setting aside the former decree, and the only difference is that one may be done a little sooner than the other; but the principle involved is the same. Consequently, if a suit can be said to be pending after a final decree is entered and while no motion or other proceeding in the cause has been made or taken, then a cause is pending after the term of the court has ended and while the defeated party has the right to have it reviewed on error.

The law and practice is settled in the federal courts that a decree may be changed, modified, or entirely annulled by the court making it at any time during the term at which it was made, and that after the term it may be reversed, annulled or set aside on appeal or by bill of review, or a writ of error may issue within——years, and it be annulled in that proceeding. Is the cause pending while the decree is subject to be set aside in any of these proceedings, or if the cause is pending while subject to one method of annulment and not pending while subject to another, why the difference? If it is not pending when it may still be taken up and reversed on error, is it pending while it may be taken up and reversed on a motion for a rehearing? As was said in the argument for appellants, Henderson, et al., the term of court in the Southern Illinois district may continue for six months. A decree entered in the begining of the term may be set aside on rehearing six months afterwards, and in the meantime no one can safely deal with the property involved, whether a motion for a rehearing has been filed or not. We do not believe such to be the law in this country, where all classes of property should at all times be in the market and traffic therein unimpeded; where values change so rapidly, and where, through new discoveries and inventions, property valuable to-day may be worthless to-morrow.

The sixth assignment of error by appellant, Hitchcock, is that:

THE COURT ERRED IN DECREEING THE LEASES MADE BY INTERVENING PETITIONERS TO THE CARBONDALE COAL AND COKE COMPANY TO BE IN FULL FORCE.

This error involves a consideration of the whole case—pleadings and

evidence—and is very fully discussed in the argument of counsel for appellants, Henderson, et al. So far as such decree affects the rights of this appellant, we only urge that under the circumstances the leases of the Carbondale Coal and Coke Company cannot be in full force without suspending the leases made to appellant, and that neither under the law nor by the rules of equity should that be done. Had the receiver or the company made their motion for a rehearing at the time the decree of September 15th was entered, the company would have had an equitable right to claim that their leases were always in force. But by their negligence in this regard, this appellant had reason to believe that no such motion would be made and that such decree was final. The rule of law is that where one of two persons must suffer, the one whose neglect caused the injury should be the one to suffer. The negligence of the counsel for the receiver and the company, in this case, in not sooner filing his motion for a rehearing, caused this appellant to take the leases.

Another leading principle in law and equity is that the law will favor the diligent. The appellant was diligent; the appellee was negligent. The appellant was vigilant; the appellee dilatory. If either must suffer, by all rules of equity which should it be? That it was wrong for Hitchcock to take his leases under the circumstances shown in evidence cannot be contended. The Carbondale Coal and Coke Company had held these leases for twelve years, with over a thousand acres of land held in fee and under lease; they had taken the coal from —one witness swears 103 acres, another 140 acres. The coal on each acre, at five cents a ton royalty, was worth to the lessor $400. The land of these lessors was over one mile from any shaft or opening. What hope did these lessors have that they would realize the value of their lands in an ordinary lifetime? They had been compelled to trade out their little rent bills at the company's store or to sue for it and get it at the end of tedious litigation; and, to "cap this climax," the lesse had become insolvent and they could no longer collect by law. Are the lessors to blame, therefore, for taking measures by making written demands for their rent and thereby terminate the leases? Suppose the lessors had applied to the court for an order on the receiver: under the practice in this district the receiver might have been ordered to pay rents for the time it was in the control of court, but nothing due previous thereto.

The seventh assignment of errors by appellant, Hitchcock, is that:

THE COURT ERRED IN DECREEING THE LEASES MADE BY THE INTERVENING PETITIONERS TO THE APPELLANT TO BE VOID, FOR NAUGHT HELD AND SET ASIDE.

This assignment is supported by the same argument as the sixth.

The decree was erroneous, because the leases to appellant were taken by him in security, in good faith, and for a *bona fide* consideration paid; and the conduct of the receiver and the company induced him to believe that the decree holding the former leases void was a final determination of their validity.

In the case of Miller vs. Sherry, 2 Wall, 237, this court said: "The decree is conclusive upon the parties until reversed, "and the reversal would not affect a title acquired under it while it was in force."

The court also said, in another case as respects third persons, that whatever has been done under the judgment whilst it remained in full force is valid and binding. Bank of U. S. vs Bank of Washington, 6 Pet. 8.

If a motion had been made for a rehearing, it would have suspended the taking effect of the decree until the motion was heard. City of Memphis vs. Brown, 4 Otto, 715. But the motion was not made until after the leases were executed and the parties had a right to believe that it would never be made.

Why were the leases void? The leases were not prohibited by law; they were not fraudulently obtained; there is nothing apparently illegal in their terms; why, then, should the court decide them void? They may not give the lessee a right to mine on the land until some future time—until the occurrence of some future contingency—yet this does not make them void..

The eighth assignment of errors by appellant, Hitchcock, is that:

THE COURT ERRED IN ENJOINING THIS DEFENDANT FROM INTERFERING WITH OR IMPAIRING THE RIGHTS OF THE CARBONDALE COAL AND COKE COMPANY AND THE RECEIVER IN CARRYING ON MINING OPERATIONS ON THE LEASED PREMISES.

Whatever might have been the decree in this cause, under the evidence an injunction was unnecessary and uncalled for. By it appellant was prohibited from exercising any rights under his leases. No attempt had been made, no threat shown, no act done, no foundation of any kind or motive laid, for an injunction. An injunction, we understand, is a process issued by a court for the purpose of preventing some threatened wrong. There was nothing threatened here, right or wrong; and we think there was no reason whatever for this decree. By it appellant was prevented from instituting legal proceedings to test his rights. He could do no act by which the validity of his leases could be tested in a court of law. By it he was deprived of the right of a trial by jury. If the receiver failed to comply with any of the terms of the former leases; if the company became dissolved and their charter withdrawn; if the former leases were abandoned; yet, by reason of this injunction appellant never could do any acts by virtue of or

under his leases. Courts rarely appoint receivers over real property, and never grant injunctions to settle disputed titles, leaving the parties to their ordinary remedies at law. High on Receivers, 557, and authorities cited in note 1.

The burden rests on the complainant to make out a clear case to justify the relief, and the court should be reasonably satisfied that he will lose the benefit of his recovery before it will interfere. Davis vs. Reaves, 2 Lea, 649. It is further held that a lessee of land will not be deprived of his rights through a receiver or injunction unless it is clearly shown that there is such danger of loss as will move the conscience of a chancellor. C. & A. Oil Co. vs. Petroleum Co., 57 Pa. St. 83.

In conclusion, the appellant, Hitchcock, believes that he has been greatly wronged by this decree. While many charges were made against him in the answers of Blossom and Burr, no evidence was offered to sustain one of them. It was charged that he was not taking these leases for himself, but for the Crystal Plate Glass Company. No evidence of any kind was offered tending to sustain this charge All that would even tend to create a suspicion of this was the fact that appellant was the receiver of that company; but that suspicion is rebutted by evidence offered by Blossom himself, who says that Hitchcock told him this coal was unfit for his uses, and that, although he had a contract for from 30,000 to 100,000 tons, only 900 had been delivered and no more called for. The decree seems to have been entered on suspicion alone, and we confidently believe, on the general ground that there is no evidence whatever to sustain it, it should be reversed.

Respectfully submitted,

JAMES McCARTNEY,

Attorney for E. A. Hitchcock, Appellant.

Office Supreme Court U. S.
FILED,
MAR 19 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 247.

WILLIAM HENDERSON, JOSEPH WALDRON, CATHARINE WALDRON, HENRY WALDRON, ET AL., APPELLANTS,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

No. 248.

ETHAN A. HITCHCOCK, APPELLANT,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

Statement and Brief on Behalf of the Appellees.

A. H. GARLAND,
H. J. MAY,
CHARLES S. TAUSSIG,
JAMES TAUSSIG,
For Appellees.

Press of McGill & Wallace, 1107 E Street N.W., Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 247.

WILLIAM HENDERSON, JOSEPH WALDRON, CATHARINE WALDRON, HENRY WALDRON, ET AL., APPELLANTS,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

No. 248.

ETHAN A. HITCHCOCK, APPELLANT,

vs.

THE CARBONDALE COAL AND COKE COMPANY, WILLIAM E. BURR, TRUSTEE, AND HOWARD A. BLOSSOM, RECEIVER.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

STATEMENT AND BRIEF ON BEHALF OF THE APPELLEES.

STATEMENT AS TO WILLIAM HENDERSON ET AL., INTERVENING PETITIONERS BELOW AND APPELLANTS IN NO. 247.

The Carbondale Coal and Coke Company was a corporation engaged in the business of mining coal in the

counties of Williamson and Jackson, State of Illinois. (Rec., 2.) For that purpose it bought and leased coal lands in 1873. The company obtained, among others, five leases for different tracts of land in Williamson County, Ill., which are the subject-matter in controversy. These leases were made by the then owners of the land to the company substantially on these terms: That the lessee-company was to pay a rental or royalty of one dollar for each acre of land leased as long as no mining operations were carried on by the company; and that, when mining operations were carried on, the company was to pay five cents royalty for each ton of coal mined. The leases covered only the mining privilege and the right of entry and possession necessary for that purpose, the lessors reserving to themselves the right to cultivate the ground and to reap the crop raised thereon. (Rec., 29–45.)

From 1873 to 1884, a period of eleven years, the company held these leases without mining any coal on the lands, and paid money-royalty of one dollar per acre, without any objection thereto by the different lessors and their successors. The total amount of money-rent thus paid to the lessors during that period on the land in controversy is stated by the receiver to be about $12,000. (Rec., 56.) During that period of eleven years, the titles of the lessors passed by death and by many mesne conveyances to descendants and grantees in many instances, and the conveyances so made were in numerous instances not placed on record until long after this intervening petition was filed, although made and delivered seven years before that time. (Rec., 131–133, 141–149, and Exhibits.)

The leases in controversy contained the following clause:

"And it is furthermore agreed, that if at any time said party of the second part, its successors or assigns, shall

be in default and fail to pay any sum due for rent or royalty as aforesaid, for the term of ten days after written demand therefor, by the party legally entitled to demand and receive the same, the party of the second part, its successors and assigns, shall forfeit all right to mine in, or otherwise hold or enjoy, the tract or surveyed subdivision of land, for and on account of which said unpaid sum shall have become due; and after such default and demand as aforesaid, the party legally entitled to the life estate or fee-simple ownership of said land may at once, or at any time thereafter, enter into the exclusive possession thereof, the mines and all the appurtenances thereto belonging, and hold the same free and discharged of every and all claims of the party of the second part, its successors, assigns, or other legal representatives." (Rec., 29–45.)

In the year 1884 the Carbondale Coal and Coke Company became financially involved, and on the 14th of October, 1884, a bill was filed in the court below by its stockholders and creditors asking for the appointment of a receiver. (Rec., 1–20.) The appointment was made on that day, and since that time the estate of the corporation has been in charge of the court through its receivers, John W. Harrison, who subsequently resigned (Rec., 21), and Howard A. Blossom, who was appointed as his successor, and still holds the position of receiver. (Rec., 83) At the time of the appointment of the receiver the property of the corporation, including the leaseholds in question, was covered by two first mortgages on different portions of the estate, one securing $75,000 and interest, and the other for $50,000 and interest, making a total mortgage debt of $149,750. (Rec., 8–20, and Exhibits A and B.) Receiver's certificates are outstanding to the amount of $91,660. In addition to these debts, claims by creditors against the corporation are on file in this cause, seeking preference over the mortgage debts, which claims amount in the aggregate to $44,513, making a total indebtedness of the corporation of $235,923.

The rent reserved for the year 1884 by the five leases in question, and the rents reserved by one lease for the years 1882 and 1883, amounting in the aggregate to about $1,100, were not paid by the corporation, nor by Harrison, the receiver, after his appointment; and on the first of January, 1885, the parties claiming to be the owners of the different tracts of land covered by the five leases, partly through their counsel, and partly in person, sent to the receiver, *by mail*, written statements setting forth the amounts of rents respectively claimed by them, stating in addition "that they then and there demand the rent, and if payments be not made within ten days from the date of the demand they would claim a forfeiture within the terms of the lease." (Rec., 50–55.) There is no evidence in the record that any declaration of forfeiture was made by indorsement in writing on the leases; no demand or notices of intended forfeiture was made of the corporation or its officers or agents; nor was any demand made on the premises; nor was any demand made at the office of the corporation or its agents in Williamson County; nor was any demand made or notice posted on the lands.

No application was made by the appellants to the court for an order on the receiver to pay the rents respectively claimed to be due them, and no order to that effect authorizing the receiver to make such payments was made by the court. The receiver consulted his counsel, Judge W. J. Allen, in relation to the matter, and upon an examination of the facts and the records, the receiver was advised by his counsel that by death, mortgage and otherwise, and by alienations through deeds not appearing on record, the title to the leased lands had become so obscured that the receiver could not, without great risk, pay the rents in question until the respective rights of the different claimants of the rent were passed upon and ascertained by an order of court directing the payment of

such rents. (Rec., 138–9.) The parties claiming the amount of rents in question were informed by the receiver to make such application to, and obtain such order from, the court, which they failed to do. (Rec., 132–3.)

It appears conclusively from the evidence that the advice given to the receiver by his counsel was correct, and that neither at the time the demand was made, nor at the time of the filing of the petition in this case, did the majority of the appellants own the lands in the proportion in which they claimed to own them by their petition; nor were they entitled to the rents in the proportion in which they were claimed in the demands and in the petition. The specific facts subtantiating this statement appear fully in the uncontradicted testimony of William H. Warder, an expert examiner of land titles, taken on behalf of the appellees in this cause. (Rec., 141–149, and Exhibits.)

In May, 1885, nearly five months after the notices to the receiver were mailed, the appellants consulted with their counsel, Messrs. Washburn and Barr, and desired them to take steps to obtain for them either the payment of the rent claimed by them to be due, or a forfeiture of the leases in question. *It thus appears from their own evidence that in May, 1885, no forfeiture had yet been declared* (Rec., 22–9); *but the petition alleges that the leases were forfeited in January, 1885.* (Rec., 98, 99, 109, 121, 122, 125–7.) The appellants were thereupon advised by their counsel that proceedings could and would be instituted by them, which would lead either to the payment of the rent claimed, or to a forfeiture of the leases. (Rec., 121–2.) The appellants were also informed by their counsel that another corporation, whose name was not disclosed, stood ready to take new leases for the lands in question, if a forfeiture should be obtained, and an agreement was made between them and their counsel to the effect that if forfeitures of the leases were obtained by them and

new leases were made to another corporation, no fee would be charged or collected from them by their counsel; but that if the proceedings resulted in the collection of the rent claimed to be due them, their counsel should obtain as their fee a proportion of the rent collected, to wit, ten per cent. thereof. (Rec., 125–6.)

It is claimed by the appellees that the evidence tends to show that the counsel of the appellants also represented the corporation in question seeking to obtain these leases, which corporation was then and is now the competitor of the appellee-corporation and of the receiver appointed by the court in the business of mining and selling coal. (Rec., 121, 135, 140.)

On the 17th of July, the persons claiming to be the owners of the tracts of land embraced in the five leases in question, joined in one petition, filed in this suit, setting forth their pretended ownership, the existence of the leases, the demand on the receiver by mailed notices of the rents claimed to be due, and the failure of the receiver to pay the rents; that by such failure the rights of the company and its successors in the leases had become forfeited; *that the petitioners had entered into possession of the leased lands*, and praying the court to adjudge the leases in question to be forfeited and null and void. (Rec., 22–55.) Of the filing of this petition the receiver alone received notice; no notice thereof was given to the trustees in the mortgages, nor to the appellee-corporation, all of whom were parties defendants in the main cause and had appeared therein.

In August, 1885, the receiver filed his answer, setting forth, substantially, that the corporation had paid over $12,000 in royalties for the lands in question; also, the obscure and confused condition of the titles to the lands and the advice of the receiver's counsel, heretofore referred to, to the effect that he could not, without great risk, pay the sums claimed without an order of court upon the ascertainment of the respective rights of the parties; that the

amount of royalties already paid exceeded in value the entire fee of the lands in question, including surface as well as coal privilege, whereby the lessee had acquired an equitable interest in the land; that the lands, although not yet made available by the corporation, were of great value to the corporation, and would be, in the near future, absolutely necessary for its operation; that a forfeiture of the leases in question would be a severe blow to the corporation and its creditors, and would not only greatly impair the security of the mortgagees, but would impair the value of the whole property to such an extent as to endanger the payment of the indebtedness contracted by the receiver under the order of the court, and destroy the security of the mortgagees; that the intervening petitioners never made application to the court for an order to the receiver to pay these rents; that no such order was ever made. The receiver further answered that it had been the long-established custom between the corporation and the lessors to make payments of rent in the latter part of December, and that lessors had been in the habit of waiving the forfeiture clauses in the leases and accepting their rents long after their maturity; that, although the corporation was frequently in arrears of rent, at no previous time had any attempt been made to forfeit any of the leases, but the lessors invariably sued for and recovered their rents; that the certificates of indebtedness issued by order of the court were taken by different parties largely upon the faith of the value of these leased lands.

That the trustees in the two mortgages should be made parties to these proceedings, in order that they might protect their interests; and thereupon the receiver, in his answer, prays that the intervening petition be referred to a master for the purpose of ascertaining the rights of the several appellants under the respective leases, the amounts due to them, and whether said sums should be paid, and to whom. The answer sets forth

that no injury has been suffered by the appellants, and none would be suffered by them if the court refused to forfeit the leases in question upon payment of the rent due. The answer further alleges the belief of the receiver that the appellants are not making their demand for a forfeiture voluntarily, but under the influence of outside hostile and competing corporations, desirous to embarrass the operations of the receiver and to destroy the value of the property in his hands. (Rec., 56–9.) To this answer the appellants, by their counsel, filed exceptions on the 2d of September, 1885, substantially claiming that the answers did not set forth any valid defense against their claims. (Rec., 60–1.)

On the 15th of September the court passed upon and sustained the exceptions, and without any evidence being taken in the cause, and without any of the other defendants having been cited to appear and defend, the court ordered that the prayer of the appellants be granted and the leases in question be declared forfeited and null and void. (Rec., 61–2.)

On the 23d of September, the receiver filed his motion and application for a rehearing of the cause, supporting the same by affidavits, and, on the 25th of September, 1885, the application for a rehearing was granted, and the decree so entered was set aside and the cause reopened for rehearing. (Rec., 62–3–4.)

It appears from the evidence that on the 17th day of September, 1885, two days after the entry of the decree above mentioned, and on the 26th day of September, one day after the said decree was vacated, the appellants executed leases for the lands in controversy to one Ethan A. Hitchcock, who is the receiver and president of the St. Louis Ore and Steel Co. and president of the Crystal Plate Glass Co., a corporation under the laws of Missouri. (Rec., 117, 126, 136, 139–140; see ans. of Hitchcock, Rec., 88–9; also amended petition of Henderson *et al.*, Rec.,

80–1.) And the evidence tends to show, and it was admitted by counsel in the course of argument in the court below, that said Hitchcock obtained said leases for one of the two corporations, who are competitors of the appellee-corporation, and of the receiver, in the matter of mining and selling coal. (Rec., 121, 135, 139–140.)

One of the new leases, to wit, the lease of Catharine and Henry Waldron, was made to E. A. Hitchcock on the 26th day of September, 1885, one day after the decree was set aside, and after the rehearing was granted. (Rec., 81.) On the 28th day of March, 1886, the appellants asked and obtained leave to amend their petition, and filed an amendment setting forth the making of the new leases to Hitchcock, stating that said new leases, except one, were made before the decree in question was set aside; that one lease was made after the decree was set aside, but without knowledge of that fact by lessor. Shortly thereafter William E. Burr, trustee in the mortgage made by the appellee-corporation, asked and obtained leave to defend against the petition in question, amended and filed his answers to the original and amended petitions, setting up all the defenses advanced by the receiver in his answer, and in addition thereto alleging affirmatively that the appellants are not the parties who were at the time of the filing of their petition, or at the time of the several demands of rent, entitled to the rents reserved in the leases; that no demands were made in the manner and at the times prescribed by law to entitle the lessors to a forfeiture of the leases.

That no demands were properly made, and no proper notices of intended forfeitures were given.

That at the time of the demands made the property was under the control of the court, and for that reason no forfeiture of the leases could be declared.

That the owners in each of the five leases each have a separate and distinct contract.

That there was no privity of interest or estate between the several lessors in the five leases, and that they have no right to join in one petition for the forfeiture of their several leases.

The trustee, in his answer to the amended petition, further alleges that Hitchcock, the new lessee, had notice of the proceedings in this cause, and is not an innocent purchaser.

That he did not take the leases for himself, but for the Crystal Plate Glass Company, a corporation under the laws of Missouri, which had no right, under its charter, to receive or hold such leases or to operate coal mines. And the trustee prays for affirmative relief, and asks the court to declare the leases to Hitchcock null and void; that it may order the production and cancellation of the new leases, and that Hitchcock be cited to appear and show cause why this prayer should not be granted.

The answer further alleges that the receiver, being in doubt as to the persons who are entitled to the rents, has deposited in the court the sum of $1,100, being a sum sufficient to satisfy all the rents claimed, in order that said sum may be distributed as ordered by the court.

The answer further alleges, and the record shows, that one of the intervening petitioners, G. T. Johnson, has accepted from the receiver all the rents due to him under the lease made by him to the appellee-corporation, and has consented, in writing, that any forfeiture heretofore attempted to be declared by him may be treated as null and void, and that the proceedings may be dismissed as to him. (Rec., 81–2, 160.)

The receiver filed his answer to the amended petition, setting up the same defenses, and, the cause being thus at issue, testimony was taken by both parties. (Rec., 83–4.)

Complete abstracts of the titles to the different tracts of lands in controversy are produced in evidence (Rec., bet. pp. 158 and 159); and it is proved, by comparison of

the statements of the appellants in their petition with the records, that the appellants did not own the land in the proportion claimed by them on January 1, 1885, nor at the time their petition was filed, in July, 1885. In March, 1886, a number of deeds, that had been executed in 1879, were recorded by the appellants, which changed the titles, but even taking these deeds into consideration the titles are not as claimed by the appellants. The proof shows that the titles were not in the appellants as claimed, and that, if the receiver had paid the rents as demanded in the alleged notices, he would have paid the wrong parties. (See Warder's Dep., Rec., 141–9, and Exhibits; also, Rec., 132–3.) The statements and title-papers given in evidence by the appellants show them to have been mistaken in many respects, and that they did not understand the condition of their own titles.

It is established by undisputed evidence that there was no regularity in the collection of the rents by the appellants; they bought goods at first, as they wanted them, at the store of the appellee-corporation, and had the amounts charged to their rent accounts; but afterward they were only allowed to take out the goods *pro rata* by the month. Thomas Waldron took his accounts out almost entirely; so did some of the Tully heirs; Catharine Waldron allowed her accounts to run for a year or two without pressing for the money; William Henderson and Tinsley Priddy allowed their claims to run along in about the same manner, and in 1882 and 1883 sued and collected their money by law. (Rec., 134–35.)

After all the testimony had been filed, the appellants asked and obtained leave to amend their petition, and amended the same in conformity, in some respects, with the evidence of Mr. Warder. (Rec., 159.)

The receiver and W. E. Burr, trustee, answered the amendment to the petition. (Rec., 159–60.)

The court then made its final decree, dismissing the

petition of the appellants, and declaring the leases made to the Carbondale Coal and Coke Company to be in full force. The leases made to Hitchcock were declared void and set aside. (Rec., 160–1.) The appellants were granted an appeal to this court. (Rec., 161–2.)

A separate assignment of errors was made by these appellants. (Rec., 165–6.)

A statement as to E. A. Hitchcock's separate appeal will appear in its proper place hereafter.

We would suggest that it is questionable whether any of the appellants have a sufficient amount in controversy to confer jurisdiction on this court. The order allowing the appeal states that, upon evidence introduced in open court, it appears that there is a greater amount than $5,000 involved in the property of all the appellants; but there is no evidence showing that each appellant has that amount in controversy. (Rec., 161.)

The Steamship Haverton, 137 U. S., 145–6.
Dows *v.* Johnson, 110 *Ib.*, 223.
Red River Cattle Co. *v.* Needham, 137 U. S., 632.

BRIEF.

Inasmuch as counsel for appellants have argued the assignment of errors in the order in which they are made in the record, we will, for the purpose of uniformity in the presentation of the argument, do the same.

First Assignment of Errors.

The action of the court below in granting a new trial is not subject to review here. The motion was addressed to the discretion of the court. Only a few, if any, of the many authorities on this point need be cited here.

T. H. R. R. *v.* Struble, 109 U. S., 381.
Kerr *v.* Clampitt, 95 *Ib.*, 188.
Bronson *v.* Schulten, 104 *Ib.*, 415.

The court below found the petition for a rehearing sufficient and satisfactory, and, in its discretion, granted a new trial. No objection was made at the time to the form or contents of the petition. Exceptions could not be taken to the ruling of the court upon a motion for a new trial. It is not the subject of exception according to the practice of the courts of the United States.

Fishburn *v.* R. R. Co., 137 U. S., 60.

M. P. &. R. Co. *v.* C. & A. R. Co., 132 *Ib.*, 191.

The cases cited in the brief of counsel for appellants do not sustain their reasoning. In *Doss et al.* v. *Tyack et al., 14 How., 297*, it is held that a court has a right to set aside its own judgment or decree at the same term in which the judgment or decree was rendered, on discovering its own error in the law, etc. And in *Bassett* v. *United States, 9 Wall., 38*, the court announces the same doctrine, and says: "This control of the court over its own judgments during the term is of every-day practice."

The court below in this instance set aside its decree at the same term in which it was rendered. And no matter what the rules of the court may have been as to the mode of granting or refusing a rehearing, its action cannot be reviewed on assignment of error by this court.

In *Kerr* v. *Clampitt, supra*, the system of procedure in civil cases, adopted in Utah, authorized appeals to the Supreme Court of the Territory from orders of its District courts granting or refusing new trials; but this court said in that case:

"We have no jurisdiction to revise the action of an inferior court upon the question of granting or refusing a new trial, however meritorious the grounds presented for its consideration or erroneous its decision."

Second Assignment of Errors.

The record shows that the first decree was rendered on the 15th September, 1885. This decree was set aside and a new trial granted ten days afterward, namely, on the 25th September, 1885. On the 17th September all of the appellants, except Catharine and Henry Waldron, executed mineral leases to the same premises leased to the Carbondale Coal and Coke Company to E. A. Hitchcock, who was subsequently made a party to the suit, and has appealed separately. Catharine and Henry Waldron also executed a lease to E. A. Hitchcock on the 26th September, one day after the decree of 15th September had been set aside. (Rec., 80–1.)

It is contended by counsel for these appellants that the decree of 15th September was binding as a final decree for the ten days of the term in which it existed, notwithstanding it was, within the term, set aside and absolutely annulled. The object of this position is to sustain as valid the mineral leases made to Hitchcock on the 17th September. The contention on behalf of the appellees, in relation to the leases to Hitchcock, is that the appellants were lessors pending the suit, and Hitchcock a lessee pending the suit.

The cases cited by counsel in behalf of the appellants do not support the assignment of errors. In fact they do not appear to have any bearing whatever upon the question raised, which is indeed a novel one, considering the well-established rulings of the courts upon the point.

That the courts have unlimited power and control over their own judgments and decrees during the term at which they are rendered, and may change, modify, or annul them, is a rule of practice and of law firmly established by repeated decisions of this court, and of all the other courts of the country.

Bronson *v.* Schulten, 104 U. S., 415.

T. H. R. R. *v.* Struble, 109 *Ib.*, 381.

Kerr *v.* Clampitt, 95 *Ib.*, 188.
Doss *v.* Tyack, 14 How., 297.
Bolton *v.* McKinley, 22 Ill., 203.
Carley *v.* Carley, 7 Gray (Mass.), 545.
Freem. Judg. (3d Ed.), § 90.

Inasmuch as the court had power to change, modify, or annul the decree at any time during the term, and inasmuch as the parties against whom the decree was rendered could interpose a motion for a rehearing at any time during such term, it is clear, we think, that the decree did not become final until the end of the term at which it was rendered; that is, the decree was not final until the court below had lost its control over it. In this case the court exercised its power and control over the decree, under the practice and the law, annulled it upon a proper motion for a rehearing, and granted a new trial. Further proceedings were had in the court which resulted in a final decree, from which this appeal has been allowed. The general rule seems to be that judgments and decrees take effect at the end of the term at which they are rendered. It is argued, however, that the statutes of the United States are silent on the subject. If this is so, let us examine the statutes of Illinois and see if we can find a guide there for the action of the court.

Under the Revised Statutes of Illinois of 1845 (p. 300, sec. 1) it is provided that liens on real estate shall begin with the last day of the term at which the judgment or decree was rendered.

By the act approved March 22, 1872, (L. 1871–2, p. 505), it is provided that there shall be no priority of the lien of one judgment over that of another rendered at the same term of the court.

2 Starr & Curtis's Annotated Stat. (Ill.), p. 1379.

The above references to statutes, which are to be con-

strued *in pari materia*, show conclusively that, under the practice in Illinois, judgments and decrees do not become final until the end of the term. And it may be observed that under the practice in Illinois either party may move for a new trial before the entry of final judgment, *or during the term the judgment or decree is rendered.*

Bolton *v.* McKinley, 22 Ill., 203.
Cook *v.* Ward, 24 *Ib.*, 295.
State *v.* Nelson, 49 *Ib.*, 171.

If the local law, practice, and decisions of the State of Illinois furnish rules for this court for the ascertainment of the rights of the parties in this suit, there can be no doubt that the decree of September 15th, which was set aside, was not, at any time, a final decree for any purpose whatever.

The references to the Illinois laws and practice, and to the decisions of the courts (*supra*), would, no doubt, be sufficient to establish the position of the appellees upon this point, but we wish to call the attention of the court to other decisions, which we regard too important to be omitted.

"A man had a judgment and execution issued, and afterward the judgment was set aside for being unduly obtained, and restitution awarded, and afterward the defendant brought trespass against the plaintiff in the first action for taking the goods, and it was admitted that it was well laid against the party, *for by the vacating of the judgment it is as if it had never been.*"

6 Rob. Pr. (Virg.), 711, n. 5.
Turner *v.* Felgate, 1 Lev., 95; T. Raym., 73, S. C.

"It is certainly good policy in the law to allow courts an hour's reflection; time to revise hasty action, correct mistakes, and review such error as they may have fallen into for want of sufficient consideration, and to this end they have, during their respective terms, to make up their records and fully consider the propriety of their judgments, and to review and correct any mistakes, errors,

or indiscretions into which they may have fallen during the term, *and when such revision is had, the action of the court and the record stands precisely as if no such former mistake or erroneous judgment had ever been given or entered.*"

Underwood *v.* Sledge, 27 Ark., 297.
See Memphis *v.* Brown, 94 U. S., 715.
Also, *Ex parte* Lang, 18 Wall., 167.
Freem. Judg. (3d Ed.), § 90, and notes.

It seems to us that, upon the above authorities, this question is fully disposed of in favor of the appellees.

Third Assignment of Errors.

The court below found that no legal demand had been made for the rents. The notices or demands were mailed to John W. Harrison, St. Louis, Mo. They were not even addressed to him as receiver. (Rec., 55.) Even if the receiver, Harrison, was the proper person to be served with the notices, without application to the court, which is not admitted, sending the same by mail was not the service required either by the common law or by the statute of Illinois. When the notices were mailed the office of the appellee-corporation was at Carbondale, and it had been the custom of these appellants for years to demand their rents there, and receive payment either in money or goods. (Rec., 134–5.) In this instance the custom was, for some reason not explained, departed from, and the office of the company at Carbondale, as well as that of the receiver at Carterville, where the notices were mailed, ignored. No demand was made of the lessee, the Carbondale Coal and Coke Company. The demand is alleged to have been made upon the receiver only. The notices were mailed to John W. Harrison only. The notices were not given, nor the demands made, by the proper persons. According to the evidence, the title to the lands had changed and become uncertain; and it also shows the discrepancies between the names of

the claimants in the notices and the proper owners of the lands upon which the leases were given. (Rec.. 141–9.) And this is admitted by the appellants in the last amendment to their petition. (Rec., 159.)

The receiver's duties were those ordinarily conferred by the courts. (Rec., 21.) The appointment of the rereceiver did not destroy the corporate existence of the Carbondale Coal and Coke Company. It continued to exist (*City of Rochester* v. *Bronson, 41 How. Pr.* [*N. Y.*], *78; Field on Cor.*, § *442*). A demand upon it for the rents would probably have been complied with. But we contend that the appellants should have gone to the court below for an order on the receiver to pay the rents, inasmuch as the possession of the receiver was the possession of the court. He was an arm of the court and executed its orders. In this instance he protected the property in his hands by not paying the rents upon the alleged demands. He was advised by counsel that the wrong persons might receive the rents in the confused condition of the titles. (Rec., 138–9.) He acted upon the advice of his counsel, and the evidence discloses that the advice of counsel was correct. Besides, the lessors had adopted a custom in the collection of their rents either in goods or money, and at such times as it suited their convenience, by which they had, for a long time previously to the commencement of this suit, waived their right to a strict compliance with the terms of their leases in this respect. By their own acts they waived the right to have the leases declared forfeited for non-payment of rents. Upon the above state of facts, which is sustained by the evidence, it cannot be said that the receiver did not protect the property in his hands by refusing to pay the rents until the appellants applied for and obtained the proper order of the court. The question as to whether application should have been made to the court for an order on the receiver arises under the next assignment of errors.

Let us consider further whether a legal demand had been made for the rents. We insist that no such demand was made, either under the common law or under the statutes of Illinois; for the forfeitures sought to be enforced in this case must be made either common-law forfeitures or forfeitures under the statutes of Illinois.

Under the common law, where the lease contains a clause of re-entry, in event of breach of covenants, several important steps are indispensable to a valid declaration of forfeiture. The law does not favor forfeiture: it is considered a harsh remedy; therefore the lessor is held to the strictest requirements in establishing this right. Before a legal forfeiture can be declared there must be a demand of the rent on the day it falls due, for the precise amount, at a convenient hour before sunset, on the land, at the most conspicuous place, if no place is named, or at a place specified in the lease for its payment. The law requires a demand to be made, in fact, at the place, although no person be present, and there must be a failure or refusal, at the time, to make payment. When all these prerequisites were strictly complied with, the common law authorized the landlord to declare a forfeiture, if the lease provided for such forfeiture.

1 Saund. R., 287, note 16.
Doe & Forster *v.* Wandlass, 7 T. R. (7 Dun. & E., * 117), 117.
Jackson *v.* Harrison, 17 Johns. Ch., 66, 71 and note A.
Prout *v.* Roby, 15 Wall., 472, and cases cited.
Connor *v.* Bradley, 1 How., 211, and cases cited.
Chadwick *v.* Parker, 44 Ill., 326, 330–5.
Dodge *v.* Wright, 48 *Ib.*, 382.
Burt *v.* French, 70 *Ib.*, 254.
Woodward *v.* Cone, 73 *Ib.*, 241–4.
Chapman *v.* Wright, 20 *Ib.*, 120–1.
Cheney *v.* Bonnell, 58 *Ib.*, 271.
Chapman *v.* Kirby, 49 *Ib.*, 211–15.

The common law relating to forfeitures has been somewhat modified by the statutes of Illinois, but no legal demand was made by the appellants as required by such statutes.

The statute of 1865 gives a remedy where the lease contains no clause for a re-entry, and also dispenses with the necessity of making the common-law demand for rent on the very day it falls due where a forfeiture is declared under statute. No other changes were made.

The statute provides that "when default is made in any of the terms of the lease, it shall not be necessary to give more than ten days' notice to quit or of the termination of such tenancy, and the same may be terminated on giving such notice to quit at any time after such default in any of the terms of such lease."

Laws of 1865, p. 107.

2 Starr and Curtis's Annotated Statutes, p. 1494, sec. 9, chap. 80.

Hurd's Revised Statutes Ill., 1883, p. 711, sec. 9.

To create a forfeiture, under the statute, there must be a default in paying rent, a demand of the same, and ten days' notice to quit, and a failure to pay the rent before the expiration of ten days. When all these things concur they operate to produce a forfeiture, and no action accrues until after they have occurred.

The service of demand or notice under the statute must be as follows:

"Any demand may be made or notice served by delivering a written or printed, or partly written and printed, copy thereof to the tenant, or by leaving the same with some person, above the age of twelve years, residing on or in possession of the premises; and in case no one is in actual possession of said premises, then by posting the same on said premises."

Starr and Curtis's Annotated Statutes, 1885, p. 1495, sec. 10.

In passing upon this law the Supreme Court of Illinois, in *Chadwick* v. *Parker*, *44 Ill., 333–335*, said:

"Our General Assembly, at the session of 1865, introduced important changes in this branch of the law. The second section declares that in all cases of tenancies where default shall be made in the payment of rent due, or in any of the covenants of the lease, it shall not be necessary to give more than ten days' notice to quit, or of the termination of such tenancy, and that the same may be terminated on giving such notice to quit at any time after such default in any of the covenants of such lease. The form of the notice is prescribed. It also declares that no other notice or demand of possession or termination of the tenancy shall be necessary.

"The second section was obviously designed to dispense with the necessity of making the common-law demand of the rent on the very day it fell due, and to give a remedy where the lease contains no clause for a re-entry. This section seems to contemplate *two notices*, one to quit and the other of the landlord's intention to declare and insist upon a forfeiture; or why declare that it should not be necessary to give more than ten days' notice of the termination of the lease? While it does not, in terms, require ten days' notice to be given to terminate a lease, it declares that it shall not be necessary to give more than ten days' notice of such termination. If the intention was to only require notice to quit before bringing suit, why embrace a notice of the termination of the lease? If the default itself worked a forfeiture, then the lease was ended, and no other act could be required. But, as it is at the option of the landlord to continue or terminate the lease after a default has occurred, and as this act dispenses with the necessity of demanding payment on the day, and authorizes a forfeiture subsequently to be declared, we must suppose that the General Assembly intended to give the lessee some benefit by the notice of the termination of the lease, and we can see none by informing him that it ended on the day he should have paid the rent which was in arrears. If, however, it was intended that after a default in paying the rent, the landlord might give ten days' notice that if the rent was not paid, the lease would then be termi-

nated, we can see that there would be some mutuality, that tenants having long and valuable leases could have that period within which to pay the money and prevent a forfeiture; and such was, no doubt, what was intended. Having provided for ten days' notice of the termination of the lease, if the landlord shall rely upon the statute, he should bring himself within its provisions. If his lease contains a clause of re-entry, he can, if he choose, resort to his common-law remedy, or failing in that he may, after default, give notice that unless arrears are paid within ten days his lease will terminate, and that he must quit the possession of the premises, on the notice provided by the statute; and on failure of the tenant to pay such arrears, he may, after the expiration of the time, bring his suit without further notice. If the lease contains no such clause, then the landlord may, after default in payment, give a similar notice, and with like effect."

This construction has been followed in many cases.

In *Chapman* v. *Kirby, 49 Ill., 211, 215,* it was held that there was no valid declaration of forfeiture, under the act of 1865, following construction of *Chadwick* v. *Parker.*

In *Woodward* v. *Cones, 73 Ill., 241, 243, 244,* it was held that the notice was not sufficient—being only seven days—following Chadwick *v.* Parker; Chapman *v.* Kirby; Cone *v.* Woodward.

This construction is also followed in Dodge *v.* Wright, 48 Ill., 382, 384, and Leary *v.* Pattison, 66 *Ib.*, 203, 205.

In 1873 the Illinois legislature passed the following law, which first appeared in Hurd's R. S. Ill., 1874, p. 658 sec. 8:

"The landlord or his agent may, at any time after rent is due, demand payment thereof and notify the tenant, in writing, that unless payment is made within a time mentioned in such notice, not less than five days after the service thereof, the lease will be terminated. If the tenant shall not, within the time mentioned in such notice, pay the rent due, the landlord may consider the lease ended and sue for possession under the statute

in relation to forcible entry and detainer, or maintain ejectment without further notice or demand."

Hurd's R. S. Ill., 1883, pp. 710, 711, sec. 8.
Starr & Curtis's Annotated Statutes, pp. 1493, 1494, sec. 8, chap. 80.

This statute only applies to default in payment of rent, and must be considered to mean the same in effect as the law of 1865, with the exception that the time within which payment of the rent due may be made is shortened from ten to five days. The provisions of the preceding acts as to what constitutes a proper and legal demand remain unchanged and unrepealed. Until a legal demand of the rent due has been made and a proper notice—which cannot be less than five days—has been served upon the tenant in the manner provided in section 10, as above set forth, no right of action accrues to declare a forfeiture.

See Farman *v.* Hohman, 90 Ill., 312, where this statute is construed.

These statutes of Illinois are to be construed *in pari materia*, and it cannot be claimed that their provisions were complied with by the appellants in making their demands. If the notices or demands had been served on the proper person (and they were not), neither the common law nor the statute of Illinois recognizes *service by mail*. The demand or notice must be written or printed and served by "delivering" or "posting," as prescribed by the statute.

The appellants have not brought themselves within the provisions of these statutes under the construction placed upon them by the Supreme Court of Illinois in *Chadwick* v. *Parker*, *Chapman* v. *Kirby*, *Woodward* v. *Cone*, and other cases cited, (*supra*). In *Chadwick* v. *Parker* the court says two notices are contemplated by the statute, one to quit and the other of the lessor's intention to declare and insist upon a forfeiture. No such demands were made or notices served by the lessors here.

Upon an examination of the law applicable to forfeitures arising in this case, we do not think it can be insisted that the requisite steps were taken to declare a forfeiture under the common law. Nor can it be pretended that there were legal notices or demands, or legal declarations of forfeitures, under the statutes of Illinois.

But it is urged that the notices and demands were served upon the proper person. The receiver had conferred upon him by the court "the usual powers of receivers in equity." He took charge of all the property of the appellee-corporation, subject, however, to the order and direction of the court. The management of the business was not to be conducted as he pleased, or as if it were his individual property, but as ordered by the court. The court was managing the business through the receiver, who was its officer. The proper way to demand the rents, then, was by order of the court, if the view of counsel for appellants is adopted, to wit, that the demand could not have been made of the Carbondale Coal and Coke Company. Take the converse of the proposition. Suppose the receiver should consider it to the interest of the business entrusted to his management by the court to dispose of the leases by sale or otherwise. Could he do so without the order of the court? The question answers itself in the negative. If this is so, then how could they be forfeited by a demand or notice upon him to pay the rents without the sanction of the court?

We do not see how it can be held, in any view of this case, upon the law and the facts, that legal demands were made, or legal notices served, by the lessors.

Fourth Assignment of Errors.

But one authority is referred to in the brief of counsel for appellants in support of this assignment, and it does not apply. In that case the court held that the landlord was at liberty to re-enter, *after the expiration of the leases*,

without the leave of the court. That is not this case, for here the court is asked to declare a forfeiture of leases upon alleged demands and notices for non-payment of rents before the expiration of the leases.

The court took charge of the estate of the appellee-corporation and of the leaseholds in question in October, 1884, by the appointment of its receiver. From that time these leaseholds were in the possession and charge of the court.

The leasehold estates are still in the possession of the court. Although the petition alleges that the lessors have entered, such is not the fact, as appears clearly from the evidence. And it appears from the prayers of the appellants that they came into court, not with a claim of actual entry and possession by reason of a forfeiture, but with a prayer that the court may declare the forfeiture and annul the leases under which the court and its receiver holds the estate. The leasehold estates, therefore, are confessedly within the control of the equitable jurisdiction of the court.

The rents alleged by the appellants to have remained unpaid, and for which the forfeitures are claimed, became due after the property passed into the hands of the court through its receiver. And, if the leaseholds in question here were in the custody of the court, it was incumbent upon the appellants to demand the payment of the rents due by a petition to the court praying for an order on the receiver for that purpose.

To hold otherwise would be to declare that the estate of the mortgagees, who had no agency in the appointment of the receiver, may be destroyed by reason of the failure of the court to preserve it through its receiver.

The result of such a conclusion would be this: The court, at the petition of stockholders and creditors, takes charge of the estate pledged to the mortgagees. It does so for the purpose of preserving the estate for creditors

and for the mortgagees. It deprives the mortgagees, by its action, of the control of the property, and restrains them from interfering with it. It does so for the purpose of preserving the estate; instead of so preserving it, it permits the destruction of the estate by forfeiture, claimed by reason of the failure of the receiver—the arm of the court—to properly protect it. We submit that the court will not permit such a destruction while it has charge of the property, and while the estate may be preserved by satisfaction of the just demand of the lessors, when duly established and ascertained.

Whatever difference of opinion may exist between different tribunals as to the right of parties to sue a receiver in a jurisdiction other than that of the court appointing the receiver, all authorities entitled to consideration agree upon the proposition that no action can be maintained against a receiver, nor can any adverse proceedings be taken by claimants against him, interfering with the possession of the estate in his charge, except by leave of the court having charge of the estate.

In this case the receiver held the leaseholds under the order of the court appointing him. The rents due the appellants are the primary causes of action. They form the gist of the whole proceedings. Suits could not have been maintained against the receiver for these money demands without leave of the court by which he was appointed. To allow a suit to forfeit the leases in this case, under the facts, and upon notices given to and demands made upon the receiver individually, to be maintained without leave of the court, would be to allow the appellants to do by indirection what they could not do directly. We do not see why the rule should not be applied as strictly in the one case as in the other. In any view of the case the suit of the appellants is one to recover property which the receiver holds by order of the court. This court has said upon this subject:

"The rule that a receiver cannot be sued without leave of the court of equity which appointed him applies to suits against him on money demand, or for damages, as well as to those the object of which is to recover property which he holds by order of the court."

Barton *v.* Barbour, 104 U. S., 126, and cases cited.

There is such a thing as the court becoming landlord, and we think the rule applies in this case. (*Wiswall* v. *Sampson, 14 How., 64.*) The appellee-corporation attorned to the receiver under the order of the court, and the receiver, therefore, represented the interests of all the parties in the property, including the interests of these appellants. The interests which the receiver represents are often various and conflicting, and sometimes involved in doubt. It is his duty to protect the property entrusted to him to the best of his ability for all those interests, without being controlled by the representatives of any one of them.

Iddings *v.* Bruen, 4 Sandf. Ch., 417.
Albany City Bank *v.* Schermerhorn, 9 Pai., 377, and n. 1.
Edw. Recs., 104, 354 (edn. 1839).
Fletcher *v.* Dodd, 1 Ves. Jr., 85, and notes.

The state of affairs indicated above arose in this case, as the evidence shows, and the receiver acted to the best of his ability for all the interests involved; and he did so not only upon his own motion, but upon the advice of his counsel.

It matters not how many remedies the appellants may have had, *there was but one mode of procedure,* namely, by leave of the court. This course was not adopted, and consequently the court below did not err.

In *Wiswall* v. *Sampson* (*supra*) the mode of proceeding against a receiver by any person who claims title to the property, either by mortgage or judgment *or otherwise,*

is clearly pointed out and defined, and many authorities cited in support of the rule there laid down—that receivers cannot be sued without leave of the court.

The court will not permit the rightful possession of the receiver to be disturbed, without leave for that purpose, in bringing actions in ejectment; in instances where title is claimed regardless as to whether the claim is paramount to or under the right the receiver was appointed to protect; where property is to be sold on execution; in attachment or garnishment proceedings; under distress for rent due. In fact, it would be troublesome to find a single instance in which the possession of the receiver can be disturbed without the leave of the court.

Where a receiver is in possession an ejectment cannot be brought without leave of the court.

Angel *v.* Smith, 9 Ves. Jr., 335, n. *a.*

The remedy of a person claiming title to property is not to regain it by an act of trespass, but to apply to the court for redress or for leave to sue the receiver. This is so whether such person claims paramount to or under the right of the receiver.

Kerr Rec., 165–6, note *f.*

Ordinarily the court will not permit property subject to the receivership to be sold, pending the suit, on execution.

Robinson *v.* R. R., 66 Pa. St., 160.
Wiswall *v.* Sampson, 14 How., 52.
Albany City Bank *v.* Schermerhorn, 9 Pai., 372.
Kerr Rec. (Bisp. ed.), 165–6.
Angel *v.* Smith, 9 Ves. Jr., 165.
High Rec., § 142.

A receiver is not subject to attachment and garnishment as to funds in his hands.

High Rec., § 151.
Kerr Inj., 193.
Field *v.* Jones, 11 Ga., 413.
Taylor *v.* Gillean, 23 Tex., 508.
Col. Bank Co. *v.* DeGoyler, 115 Mass., 67.
Tremper *v.* Brooks, 40 Mich., 333.

The authorities above referred to show how carefully the courts in equity guard the possession of receivers. And where such possession is disturbed without leave it is held to be contempt and the offenders punished accordingly, and the cases cited below, in connection with this paragraph, support the foregoing proposition, and also the one that a landlord will not be permitted to take property from a receiver's possession, under distress, for rent due.

Dingger *v.* Collins, 69 Ala., 324.
Taylor *et al. v.* Carryl, 20 How., 594, and cases cited.
Kerr Rec. (Bisp. ed.), 165.
Lane *v.* Sterne, 3 Giff., 629.
Clark *v.* Beminger, 9 Am. L. Reg. (N. S.), 304.
Watkins *v.* Pinkney, 3 Edw. C. R., 533.
Matter of Merritt, 5 Pai., 131.
Matter of Cohen and Jones, 5 Cal., 494.
Parker *v.* Browning, 8 Pai., 388.
DeVisser *v.* Blackstone, 6 Blatchf. C. C., 235.
R. R. *v.* R. R., 46 Vt., 792.
Spinning *v.* Insurance Co., 2 Disn. (Ohio), 368.
Evelyn *v.* Lewis, 3 Hare, 472.

"A man who thinks he has a right paramount to that of the receiver must, before he presumes to take any steps of his own, apply to the court for leave to assert his rights against the receiver."

"The court will not permit the possession of a receiver to be disturbed by any person (although that person may have a good right), but such person must apply to the court for leave to disturb the receiver's possession."

Hawkins *v.* Gathercole, 1 Drew., 17.
Randfield *v.* Randfield, 1 Drew. & Sm., 314.
Taylor *v.* Carryl, 20 How., 594.,

The courts in equity are equally careful in holding receivers to a strict responsibility in the discharge of their duties. They must act upon the order of the court in paying out money, or such payments will not be allowed in the settlement of their accounts.

Kerr Rec., 168.
High Rec., § 142.
Skinner *v.* Maxwell, 68 N. C., 400.
De Winton *v.* Mayor, etc., 28 Beav., 200.

The receiver did right, therefore, in refusing to pay the rents to the appellants upon the notices and demands, and in requiring them to go to the court in equity with their claims. They are creditors of the insolvent corporation, and the receiver is their receiver.

We will present here authorities relied on to show a waiver on the part of the appellants to the right to declare forfeitures, (1) by their own acts and acquiescence in the manner of payment and collection of the rents, and (2) by the tender of the amounts due into court.

Appellants' Right of Forfeiture was Waived.

It is in evidence that the appellants disregarded the terms of the leases in the collection of their rents, and established a custom of collecting them to suit their convenience. Some of them took the amounts due them in goods from the company's store; others took part goods and part money; others did not press the collection of rents, but allowed them to accumulate, and some of them

sued, obtained judgments, and collected by law. Counsel for appellants say this would not be a waiver of the right to declare forfeitures, but it has been decided otherwise; and this is so, even if the lessee had been dilatory in the payment of the rents and at fault, for it is proved that the appellants acquiesced.

Thropp *v.* Field, 26 N. J. Eq., 82.
K. C. Elevator Co. *v.* Union Pac. R. R. Co., 17 Fed. Rep., 200–2.
Giles *v.* Austin, 62 N. Y., 486.
2 Story Eq. Jur. (12th Ed.), §§ 1314, 1315, 1516.
Palmer *v.* Ford, 70 Ill., 369.
H. F. Ins. Co. *v.* Walsh, 54 *Ib.*, 164, 168–9.
Ins. Co. *v.* Pierce, 75 *Ib.*, 426.
Morrison *v.* Tillson, 81 *Ib.*, 607.
Vail *v.* Drexel, 9 Brad. (Ill.), 439.

In the case at bar forfeiture was saved by the tender of the money into court.

Fifth Assignment of Errors.

If it has been shown by the argument on behalf of appellees that the court did not err in its rulings in any of the four preceding assignments of errors, then it may be safely said that there was no error in dismissing the petition of the intervenors.

We think it has been conclusively established that the court below did not err in granting a rehearing, and that that question is not reviewable here; that the decree of September 15, 1885, was properly set aside, under the practice and the law, during the term at which it was rendered, and was "as if it had never been," or stood precisely as if it had never "been given or entered"; that there was confusion about the titles to the lands leased, and the demands for rents due were not made by the proper persons, or owners, entitled to receive the

same; that the notices and demands were not served according to law, in this, that they were *sent by mail*, and not "delivered" or "posted" as required both by the common law and by the statutes of Illinois; that such notices and demands were not served upon the right person—John W. Harrison not being such person; but one notice and demand was served, when the statute of Illinois contemplates two; no application was made to the court in equity for leave to sue the receiver, nor was any application made to the court for an order on the receiver to pay the rents; the law requires proceedings against receivers to be instituted by leave of the court; the court of equity in this instance was the landlord, and notices and demands for rents should have been served on its receiver by its leave; that the interests which the receiver represented, so far as the leases were concerned, were conflicting and involved in doubt, and he protected them to the best of his ability for all interests; that there was but one mode of procedure to be pursued by the appellants, namely, by leave of the court, but this mode was not adopted; that the court in equity will not permit the possession of the receiver to be disturbed, as attempted here, without its leave, and for any such disturbance offenders may be punished for contempt; the court in equity holds the receiver to a strict account for all his acts, and especially in paying out money; money paid out by a receiver, without the sanction of the court, will not be allowed in the settlement of his accounts; the appellants waived their right to declare forfeitures by their own acts and acquiescence in the manner of payment and collection of the rents, regardless of the terms of the leases; and this is so, even if the lessee was dilatory; and the tender of the amounts due for rent into court pending the suit by the receiver, was a compliance with the rules of equity and law.

All the points made in the preceding argument, under

the several assignments, may not be enumerated here, but we are of the impression there are enough of them to persuade the court, without further discussion, that there was no error in dismissing the petition of the intervenors.

It may be remarked that for the first time it is asserted that demands for the rent were made upon Edwin Harrison. What has been said concerning the demands on the receiver applies to these demands, if the court shall believe from the evidence they were made. They were not legal notices and demands under the law, nor is there any evidence whatever in the record, as claimed by counsel for appellants in their brief (p. 22), that "Edwin Harrison was a kind of a general superintendent of the business of the company." The witness Washburn, to whose testimony counsel for appellants refer, testifies (Rec., 121) as follows:

"I may add that on the same day I sent by registered letter the same or like demands to Edwin W. Harrison, at St. Louis, and a few days after received from the postmaster at Carterville a registry return receipt signed Edwin Harrison, per C. M. Pierce. I sent these demands to Edwin Harrison because I had been informed that he was a large stockholder and a kind of general superintendent of the business of the company."

This is the only evidence referring to Edwin Harrison as in any way representing the corporation in any capacity, except as a stockholder, and is avowedly hearsay testimony. It is to be noticed, also, that neither the originals nor copies of these pretended demands on Edwin Harrison are produced in evidence, and the court is left without means to determine the contents or sufficiency of the demands mailed to him.

The record also contains uncontradicted testimony that the receiver at all times from October, 1884, had representatives and superintendents in charge of his

place of business, near the premises in controversy, of whom personal demand for the rents could have been made (Rec., 138), and that the location of this place of of business was notorious.

Counsel for appellants then proceed to arraign the Carbondale Coal and Coke Company for its many sins. But this cannot avail them anything. Others are materially interested in the estate in the hands of the receiver, and are in court asking that their rights may be protected against the proceedings of the appellants; and we apprehend the interests of the trustee in the mortgages, and of the receiver, who represents the interests of all persons, will be considered and upheld, and not disregarded because the Carbondale Coal and Coke Co., which counsel argues has only a "mere existence," failed to carry out its business obligations. Besides, if the appellee-corporation failed to fulfill its contracts with the appellants they could have invoked the same remedy as other creditors, and could have petitioned the Court for the appointment of a receiver. If the leases lapsed, as now claimed by the counsel, why was there a prayer in the petition to the court below to declare them forfeited? The theory that they lapsed is an afterthought and an evasion.

Sixth Assignment of Errors.

It has been established by the preceding argument that the leases in controversy have not been forfeited. This being so, and no new argument having been presented by counsel on the other side, it will not be necessary to discuss this assignment.

Seventh Assignment of Errors.

There seems to be no doubt that judgments and decrees do not become final until the end of the term at which they are rendered. This subject has been fully

presented, and the authorities cited heretofore, in this brief. The rule is not subject to doubt, and does not admit of argument. This is also the statute law of Illinois. "* * * The party whose judgment is vacated before the lapse of the term *has no remedy*" (*Freem. Judg., 3d ed., § 90*). "* * * By the vacating of the judgment it is as if it had never been." (*6 Rob. Pr.* [*Virg.*], *711, n. 5*). In such revision "the record stands precisely as if no such mistake or erroneous judgment had ever been given or entered" (*Underwood* v. *Sledge, 27 Ark., 297; Memphis* v. *Brown, 94 U. S., 715*); and see the statutes of Illinois and the numerous authorities cited above in the argument under the second assignment of errors.

It cannot be claimed that Hitchcock was an innocent party in any sense, because—

1. The leases to the Carbondale Coal and Coke Company were all recorded in the recorder's office of the proper county. (Rec., 28, 31, 34, 36, 39, 42, 45.)

Hitchcock therefore had notice of the title of the company as lessee.

2. He admits in his answer that he had actual notice of the tenancy of the corporation, and of the pendency of the proceedings in this cause to enforce a forfeiture, and that he negotiated with the appellants (lessors) for his leases before the decree was entered, in expectation that a forfeiture might be declared. In his answer (Rec., 87) he says:

"But respondent avers the fact to be that having been informed that said decree had been entered as above, holding said leases to be forfeited and entirely null and void, and he having had some negotiations with lessors previous to the entering of said decree, that if such a decree should be entered in said cause, that respondent might lease said lands, and at once commence mining

coal thereon, he did, upon learning that said decree had been entered, lease from William Henderson, Catharine Waldron, and the heirs of Tinsley Priddy the lands," etc., etc.

3. While there is no direct evidence that E. A. Hitchcock acquired these leases for corporations competing with the receiver, and while he denies there is evidence that he is the president of one corporation and receiver of another corporation, "whose control of the lands in dispute would be disastrous to the property of the Carbondale Coal and Coke Company," yet the impression prevailed among all parties that the leases would be taken by one of the competing corporations (Rec., 121–140).

He obtained the leases for himself in every instance, but one, to-wit, on the 17th September, two days after the decree, which was subsequently set aside, was rendered. An effort was made by him to obtain all the leases at this time. This hasty action on his part shows that he was not innocent, and it may be inferred therefrom that he was thoroughly advised as to everything in connection with the pending litigation.

4. He was, however, a *lis-pendens* lessee and bound by the final decree entered in the cause under the rule of law that "all persons dealing with property are bound to take notice of a suit pending with regard to the title thereto, and will, on their peril, purchase the same from any of the parties to the suit."

Union Trust Co. *v.* Southern Nav. Co., 130 U. S., 565.

And Hitchcock having appeared and answered, was subject to the decree of the court, and there was no error in declaring his leases void. It is not pretended that Hitchcock did not have actual notice of the pendency of the cause at the time he attempted to obtain title by

means of the leases made to him. The doctrine of *lis pendens* cannot be regarded as a hard rule, when enforced against Hitchcock in this suit, inasmuch as the evidence proves, at least inferentially, that he intermeddled, either directly or indirectly, with the estate in the hands of the receiver, and is the cause of this litigation.

The animus which moved him to thus intermeddle is very apparent from his answer (Rec., 89), in which he makes complaints and charges against the Carbondale Coal and Coke Company in behalf of the lessors, which the lessors themselves did not make in their pleadings or testimony.

Eighth Assignment of Errors.

The receiver was in possession of the lands of the appellants for the purposes of the mining leases. Appellants, in effect, admit this by the allegations of their petition, as well as by the service of notices and demands upon him alone for the accrued rents. He is the successor or assignee of the Carbondale Coal and Coke Company, as an officer of the court, and has the same possession under the leases that that company had prior to the appointment of the receiver. From the transactions that were going on between the appellants and Hitchcock, the court did right in granting an injunction against all of these parties. They had interfered with the estate in the hands of the receiver, and still claim adverse interests.

It was proper and necessary that the court should declare Hitchcock's leases void, and should restrain him from enforcing them.

According to the uncontradicted testimony of Blossom, the receiver, the leasehold estates in controversy were a valuable part of the estate in his hands. To satisfy, in part at least, the debt created by the court through its receiver, and the two debts secured by mortgages (fore-

closure of which and sale was prayed in the cross-bills filed in the main cause by the mortgagees), it was palpably important that the title to these leaseholds of the appelle-corporation, and of the receiver, should not remain, at the time of sale, under the cloud of the leases obtained by Hitchcock. That cloud was created while the estate was in charge of the court. Hitchcock, at the prayer of the trustees, was summoned to show cause why his leases should not be cancelled. He appeared and answered, and the court, in the exercise of its clear equity powers, disposed of the whole controversy, by effectually removing the cloud upon the property. It is submitted that the court would have been justified upon a disclosure of the facts, of its own motion, to summon Hitchcock, even in the absence of any prayer to that effect, and to effectually dispose of his adverse claims and and leases. It is a familiar rule that, when a court of equity has and obtains jurisdiction of a cause for any purpose, it may retain the cause for all purposes and may proceed to a final determination of all matters at issue.

Pomeroy Eq. Jur., §§ 181, 234, 242, and cases cited.

Ninth Assignment of Errors.

In one place in their brief counsel for appellants complain of the mismanagement of its business by the Carbondale Coal and Coke Company; but here they complain because the receiver did not follow the example of that company. The company may have done wrong in paying the rents to the appellants for years without question, but this is a matter that does not enter into this controversy. It is not denied that there were changes in the titles to the leased lands, caused by death and transfers, and that confusion and doubt existed as to the real owners of the lands. The basis of this suit is the rents that fell due after the appointment of the receiver. And we presume it will be conceded that the

position and responsibility of the receiver differed entirely from the responsibilities of the officers of the company. The company might assume risks that a receiver would not. The receiver asked the advice of eminent counsel, and followed it. He then tendered the amounts due the appellants, respectively, into court. This was the common sense and lawful course for him to pursue, and he fully discharged his duty. The testimony referred to, which shows the manner adopted in the collection of these rents, may be used strongly as an argument against the appellants as a waiver of their rights of forfeiture under the terms of the leases, but we do not see how it can be advanced as an argument in favor of this assignment of error.

The argument of counsel only makes plain what was a fact, to wit, that the receiver, and his counsel, did not in any way recognize the notices and demands of the appellants as legal. Why should the receiver, Judge Allen, or any one else, condescend to inform the lessors of the doubt as to their titles, when the business was conducted in their behalf by retained counsel? It was not incumbent upon them to advise appellants, yet it appears the receiver did tell them the rents would have to be collected by order of the court. (Rec., 132–3). The tender into court was in time to save the forfeitures.

We do not recall any law, or rule of practice, that makes it one of the duties of a receiver to present the claim of a creditor to the court and ask for an order on himself to pay it. The common practice is, for the claimant to ask the court for an order on the receiver for payment of his claim, and by this practice the receiver is afforded an opportunity, in court, to make a contest if necessary. We apprehend the court would soon become suspicious of its receiver who adopted any such practice as that suggested by counsel for appellants. If the appellants and their counsel had pursued the proper practice,

and endeavored to settle their claims in the regular way, in the court, and not outside of it, all of this unnecessary litigation would probably have been avoided. If the receiver was guilty of laches as claimed, and we contend he was not, one of the interested parties should not suffer more than another, and the appellants should not be allowed to reap any advantages in this respect.

Tenth Assignment of Errors.

This assignment presents questions of fact, and the court is sustained by the evidence in its ruling.

Wm. J. Allen testified that he was attorney for the corporation for several years, and of the receivers since their appointment; that he resided at Carbondale, and had acquired knowledge of the conditions of these titles; that there were several conversations between himself and Harrison and Blossom, the receivers, and that he was sure he said to the receiver and to Mr. Blossom that he did not think it safe for them to pay these rents or claims for royalty without an order from this court; that it was doubtful who was entitled to the rents, and that he thought the only safe course was to require these claimants to get an order, which would be a protection to the receiver;" that in fact, in "view of the conflicting claims, this was the only safe course;" that after the decree of forfeiture was entered by this court he found the leases to Hitchcock on record and was informed by several of the petitioners that they had leased to another company, but is not sure whether they gave the name of the company; that during the argument before Judge Treat, Mr. Barr, one of the counsel for the petitioners, stated that the Crystal Plate Glass Company were ready to operate these mines under new leases. (Rec., 138–40.)

Wm. H. Warder testified that he is an attorney and title examiner in Williamson county, where the lands in dispute are located; that he has complete abstracts of the

titles of that county. He produces complete abstracts of the different tracts of lands in controversy, and proves, by comparison of the statements of the petitioners in the petition with the records, that the petitioners did not own the lands in controversy in the proportions claimed by them; that such was the case at the time of the demands, to wit, January 1, 1885, as well as at the time the petition was filed in July, 1885; that in March, 1886, a number of deeds, executed in 1879, were placed on record, which changed the titles, but that, even taking these deeds into consideration, the titles and ownership were not as claimed by the petitioners. He gives full particulars of the differences and defects, which are numerous.

As to Joseph Waldron's tract, Rec., 143.
As to Catharine Waldron's tracts, Rec., 144–5–6–7.
As to Tinsley and Sarah Priddy's tracts, Rec., 147–8–9.
As to Wm. Henderson's land, Rec., 142.
As to old conveyances placed on record in 1886, Rec., 145.

The statements of ownership, from the demands, notices, and petitions, being read to the witness, he testifies in each case as to their correctness or incorrectness as above stated. The testimony of this witness is not contradicted in any particular, and is supported by the deeds and documentary testimony adduced by the appellants. The testimony of this witness proves the uncertainty of appellants' titles in 1885, and that if the receiver had paid, as set forth in the demands, he would have paid to the wrong parties. The witness also proved that all the leases to the appellee-corporation were recorded. See also the testimony of H. A. Blossom. (Rec., 132–3.)

We submit that the advice of counsel was sufficient to place the receiver upon inquiry as to the propriety of

paying the rents to the appellants; the testimony, subsequently taken, sustained the position assumed by him; and the appellants admitted the doubt as to their titles, by amending their petition to make it accord with the evidence.

Eleventh Assignment of Errors.

No objection was made to the questions and answers in the deposition of Blossom; nor was any motion made to strike them out. It does not appear that the court's attention was called to the matter at all. The same thing may be stated as to Tregoning's testimony, except that an objection was interposed before the examiner. But counsel admit the evidence is utterly *valueless*. It will be difficult, therefore, to comprehend how it could even "probably" have some effect on the mind of the chancellor. The evidence does not bear on any of the material points in the cause, and is in every respect absolutely harmless. We do not admit this testimony is incompetent, but contend for its competency. Hitchcock charges that the Carbondale Coal and Coke Company mined no COAL AND WOULD MINE NONE FOR FIFTY YEARS. (Rec., 89.) Evidence is adduced that no coal was mined on the leased premises and that leases were not needed, and not valuable. The lessors so testify. (Rec., 90 to 118, and Winning's testimony, 110.)

This, it is true, makes an irrelevant and false issue, for the reason that, under the leases, the lessee was not bound to mine coal as long as it paid the royalty of one dollar per acre. But the issue is made to influence the chancellor, and it was competent for the appellees to prove the intention of the receiver to open and operate mines on these lands. It was competent for Blossom to testify to the intention of the receiver, having previously testified that he was "secretary and acting and general manager

of the receiver from October, 1884, until, on February 15, 1886, he was himself appointed (Rec., 127); and testifying on July 3, 1886, that "Mr. Harrison and I—I think, in the month of May, last year (May, 1885)—considered, seriously, the question," etc. So that, in fact, the witness speaks of and testifies to his own intentions as manager of the receiver.

"All this is utterly irrelevant." But it meets irrelevant issues and testimony produced by appellants. No objection was made at the hearing, and the court could not have been influenced by the testimony either way.

Twelfth Assignment of Errors.

The appellees here were the prevailing parties in the court below and *prima facie* entitled to costs. The appellants did not make an effort to overcome this presumption. No palpable abuse of judicial discretion is claimed, and certainly none has been shown, in requiring the appellants to pay the costs. On appeals in equity the allowance of costs is generally treated as final, and there is no good reason for modifying the rule in this cause.

Temple *v.* Lawson, 19 Ark., 148, and cases cited.
Howe *v.* Hutchinson, 105 Ill., 501.

And if this were the only assignment of errors this court would dismiss the appeal under the ruling in *Washington Market Company* v. *District of Columbia, 137 U. S., 62.*

Statement as to Ethan A. Hitchcock, Appellant in No. 248.

A decree was entered on the 15th September, 1885, declaring the leases to the Carbondale Coal and Coke Company forfeited. On the 17th September, two days thereafter, this appellant obtained leases from all the lessors to the Carbondale Coal and Coke Co. but one,

and he succeeded in getting that one on the 26th September, the day after the decree was set aside.

The court below, upon motion, set aside the decree above referred to, at the same term, and granted a new trial. (Rec., 64.)

On the 10th day of April, 1886, on motion, E. A. Hitchcock was made a defendant to the intervening petition and required to answer. (Rec., 85–6.) Hitchcock appeared and filed his answer. (Rec., 87–90.) He admits in his answer that he had knowledge of the pending litigation. (Rec., 88–9.) It also appears that Hitchcock was the president and receiver of the St. Louis Ore and Steel Co. and president of the Crystal Plate Glass Co., a corporation under the laws of Missouri, and it is proved inferentially that he obtained these leases for the purpose of holding them indirectly for one or both of these corporations as rivals of the business of the receiver of the Carbondale Coal and Coke Co.

The court, upon the evidence, decreed the leases so obtained by Hitchcock to be void and set them aside. (Rec., 161.) From this decree Hitchcock was granted a separate appeal. (Rec., 162.)

Unless the order of the court is taken as proof of the fact, we think there is some doubt about the amount involved exceeding $5,000 (Rec., 162), and we insist this ascertainment of the value is not according to law.

Red River Cattle Co. v. *Needham* (*sup.*)

BRIEF.

First Assignment of Errors by Hitchcock.

The rehearing was granted on the 25th September, 1885. (Rec., 64.) On April 10, 1886, Hitchcock was, by order of the court, made a defendant to the intervening petition. (Rec., 85–6.) He filed his answer on the

12th May, 1886. (Rec., 87–90.) It appears, therefore, that at the time the court made the ruling here assigned as error this appellant was not a party to the suit. The force of the decree which was set aside by the court has been fully discussed above under the second assignment of error in 247. The authorities sustain the doctrine that the court, under the law and practice, retains absolute control over its judgments and decrees until the end of the term at which they are rendered. This is the statute law in Illinois. It will not be necessary to repeat the references here. Suffice it to say that where a decree is set aside before the lapse of the term the party "has no remedy." (*Freem. Judg., 3d ed., § 90.*) Where a judgment is vacated during the term "it is as if it had never been." (*6 Rob. Pr.* [*Virg.*], *711, n. 5.*) And when a judgment is revised during the term, the record stands precisely as if no such judgment "had ever been given or entered." (*Underwood* v. *Sledge, 27 Ark., 297; Memphis* v. *Brown, 94 U. S., 715.*) But inasmuch as this subject is not relevant to this assignment of error, and for the reason that it has necessarily been gone over heretofore in the other branch of this appeal, we shall request the court to apply the previous argument and authorities to both appeals.

The whole subject relating to the granting of a rehearing has been fully presented under the first assignment of errors in No. 247. We ask that the argument made there, and the authorities cited, may be applied here.

Second Assignment of Errors.

It is denied that appellant acquired rights to the property by the leases which were executed pending the suit. He took the leases at his peril. Appellant made no objection to the order of the court making him a party, but appeared and answered, and by his answer waived every-

thing and submitted to the jurisdiction of the court. He could have refrained from coming into court and, by original suit, could have protected his property or could have denied the validity of any decree entered against him. (York *v.* Texas, 137 U. S., 21.)

Third Assignment of Errors.

The appellant took the leases pending the litigation at his peril, and the question of consideration, therefore, cannot be considered of very great importance. He raised the question of the validity of the leases by his answer, and the court passed upon it as one of the issues in the cause. The court had the power to declare the leases invalid, no matter what the consideration may have been, and, it is proper to say, the actual consideration nowhere appears from the evidence.

Fourth Assignment of Errors.

Counsel say in relation to this assignment that the court made the finding without any evidence to support it, and assert there is not a word of evidence to indicate that Hitchcock ever heard of the cause before he was made a party. It must be counsel have not read Hitchcock's answer or have forgotten its contents. In it he says: "* * * But respondent avers the fact to be that having been informed that said decree had been entered as above, holding said leases to be forfeited and entirely null and void, and he having had some negotiations with lessors previous to the entering of said decree, that if such a decree should be entered in said cause that respondent might lease said lands and at once commence mining coal thereon, he did, upon learning that said decree had been entered, lease from William Henderson, Catharine Waldron, and the heirs of Tinsley Priddy the lands," etc. (Rec., 87.)

The above is a complete answer to the statements of counsel for appellant.

Fifth Assignment of Errors.

This assignment again brings up a discussion of the effect of the decree of September 15, 1885, which was vacated during the same term of court, and inasmuch as the subject has been thoroughly presented heretofore it will not be necessary to repeat the argument here, but simply to refer the court to the presentation made under the second assignment of error in No. 247.

Sixth Assignment of Errors.

The legal steps were not taken to forfeit the leases made by the intervening petitioners to the Carbondale Coal and Coke Company, and inasmuch as the leases had not been forfeited there was no error in declaring them to be in full force. This question has been fully discussed in a former part of this brief.

Seventh Assignment of Errors.

The question raised by this assignment has been presented to the court in the argument elsewhere made in this brief. The cases cited by counsel in support of the error assigned relate to rights which may have accrued to persons where cases have been taken to an appellate court by writs of error or appeal from a final judgment or decree. Such is not the case here.

Eighth Assignment of Errors.

It was in the discretion of the court to enjoin the appellants, and it has not been shown that the discretion was abused. From the relations of the appellants, as well as from their acts concerning the property in the hands of the court and its receiver, in attempting to illegally transfer the titles of the mining leases to Hitchcock, it was essential not only to stop but to prevent further inteference with the estate in the hands of the receiver.

Following, as we have attempted to do in reply, the brief of appellants, repetitions have been unavoidable, and our brief has necessarily been extended to an unusual, if not improper, length.

We respectfully submit that the decree of the court below should be affirmed as to both the appeals.

A. H. GARLAND,
H. J. MAY,
CHARLES S. TAUSSIG,
JAMES TAUSSIG,
For Appellees.